10-9-90
Vol. 55 No. 195
Pages 41051-41176

federal register

Tuesday
October 9, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1631

Disclosure of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Board is issuing final regulations which implement the public information provisions of the Freedom of Information Act, as well as providing procedures for access to information and records under other authorities.

DATES: Final rule effective October 9, 1990.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523–6367, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board (the Board) was established by Public Law 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986, 1986 U.S. Code Cong. & Ad. News (100 Stat. 514) (codified principally at 5 U.S.C. 8401 through 8479), as amended by Public Law 99–509, the Omnibus Budget Reconciliation Act of 1986; Public Law 99–556, the Federal Employees' Retirement System Technical Corrections Act of 1986; Public Laws 100–20, 100–43 and 100–202; and Public Law 100–238, the Federal Employees' Retirement System Technical Corrections Act of 1988, to administer the Thrift Savings Plan (TSP) for Federal employees. Regulations of the Board are contained in title 5, CFR chapter VI, parts 1600 through 1699.

The Executive Director of the Board is publishing in part 1631 final regulations governing procedures for processing requests for records under the Freedom of Information Act (5 U.S.C. 552) and other authorities. Initial, interim disclosure regulations were published for comment at 52 FR 17922 (May 13, 1987).

The Board is an independent establishment of the Federal Government located in Washington, DC, and it has no field offices. However, for TSP records the Board does have a recordkeeping responsibility which is performed by interagency agreement or contract and the Federal agency/private contractor may be located outside of the Washington, DC area. The TSP records maintained for the Board by its contractor are subject to these disclosure regulations. At this time, the Board has an interagency agreement for its recordkeeping responsibility with the National Finance Center, Department of Agriculture, New Orleans, Louisiana 70161–1500. Board records which are not TSP account records are housed at the Board's Washington, DC, location.

Comments were received from one Federal agency and one public interest group.

The Federal agency suggested that the Board should define which TSP records are maintained by the Board and which by the employing agency. This definition is more appropriately part of the Privacy Act regulations as TSP participants who need to correct records must know from whom to seek access or correction of specific records. See Board Privacy Act regulation § 1630.11 published elsewhere in today's **Federal Register**. Third party FOIA requests may be made to the Board and are generally resolvable on a generic basis.

The public interest group raised a number of issues. The group noted that interim regulation § 1631.5 (which required that all records originating at another agency would be referred to the originating agency) might be too broad. The regulation has been modified accordingly. The group also noted that § 1631.15 gives non-government submitters an opportunity to comment on release of records they submitted even though no exemption might apply. The regulation has been modified accordingly. In addition, the group perceived that § 1631.16(b) appeared to create an exemption under FOIA for the Privacy Act. This was not intended and § 1631.16(b) has been deleted to avoid such perception. The group further argued that § 1631.11(a)(2) would require Board employees to make determinations as to what is "news," "current events," or "of current interest to the public" in deciding whether a requester is entitled to the benefits enjoyed by a representative of the news media. The Board does not desire to affect any entity's rights; however, the Board has tracked the language adopted by OMB in its definition of the term "representative of the news media" as set forth in its Freedom of Information Act of 1986 Uniform FOIA Fee Schedule and Guidelines at paragraph 6j and the accompanying **"SUPPLEMENTARY INFORMATION"** (52 FR 10012, March 27, 1987). The public interest group's final suggestion was that § 1631.12 appeared to be outdated in light of the 1986 FOIA amendments. The Board has amended the section to accommodate the suggestion.

Other changes to the interim FOIA regulations have been made by the Board.

Section 1631.3 was revised to conform to the Board's current organization of its offices.

Section 1631.4 was revised to clarify that the index to be kept is of the FOIA requests, appeals filed and decided, and Board procedures.

Section 1631.8 was revised to add the statutory authorization to extend the response time beyond 10 workdays provided by 5 U.S.C. 552(6)(B)(i) since the Board utilizes an off-site contractor as recordkeeper.

Section 1631.9(c) was added to set forth that a subsequent letter will be sent to the requester stating that records cannot be found when a preliminary letter to the same effect had earlier been sent.

Section 1631.15 was revised to implement E.O. 12600, which promulgated procedures to notify submitters of records containing commercial information when FOIA requests for those records are received by Federal agencies. The interim FOIA regulations were issued prior to publication of E.O. 12600. Concomitantly, a definition of "submitter" was added as § 1631.1(i).

Finally, there was a fee change in § 1631.11(c). The first $25.00 rather than the first $30.00 will be excused in compliance with 5 U.S.C. 552(a)(4)(A)(iv)(I) (costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee). The change was made because

the fee excuse was intended to be consistent. See § 1631.14(c).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to the disclosure of records.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects in 5 CFR Part 1631

Administrative practice and procedure, Freedom of information, and Records.

Dated: September 6, 1990.

Francis X. Cavanaugh,

Executive Director.

Title 5 CFR is amended by revising part 1631 to chapter VI to read as follows:

PART 1631—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

Sec.

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570.

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

§ 1631.1 Definitions.

(a) *Board* means the Federal Retirement Thrift Investment Board.

(b) *Agency* means agency as defined in 5 U.S.C. 552(e).

(c) *Executive Director* means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(d) *FOIA* means Freedom of Information Act, 5 U.S.C. 552, as amended.

(e) *FOIA Officer* means the Board's Director of Administration or his or her designee.

(f) *General Counsel* means the General Counsel of the Federal Retirement Thrift Investment Board.

(g) *Working days* or *workdays* means those days when the Board is open for the conduct of Government business, and does not include Saturdays, Sundays, and Federal holidays.

(h) *Requester* means a person making a FOIA request.

(i) *Submitter* means any person or entity which provides confidential commercial information to the Board. The term includes, but is not limited to, corporations, state governments, and foreign governments.

§ 1631.2 Purpose and scope.

This subpart contains the regulations of the Federal Retirement Thrift Investment Board, implementing 5 U.S.C. 552. The regulations of this subpart describe the procedures by which records may be obtained from all organizational units within the Board and from its recordkeeper. Official records of the Board, except those already published in bulk by the Board, available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. To the extent that it is not prohibited by other laws the Board also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the interest of the Thrift Savings Plan.

§ 1631.3 Organization and functions.

(a) The Federal Retirement Thrift Investment Board was established by the Federal Employees' Retirement System Act of 1986 (Pub. L. 99–335, 5 U.S.C. 8401 *et seq.*). Its primary function is to manage and invest the Thrift Savings Fund for the exclusive benefit of its participants (*e.g.*, participating Federal employees, Federal judges, and Members of Congress). The Board is responsible for investment of the assets of the Thrift Savings Fund and the management of the Thrift Savings Plan. The Board consists of:

(1) The five part-time members who serve on the Board;
(2) The Office of the Executive Director;
(3) The Office of Investments;
(4) The Office of the General Counsel;
(5) The Office of Benefits and Program Analysis;
(6) The Office of Accounting;
(7) The Office of Administration;
(8) The Office of External Affairs;
(9) The Office of Automated Systems; and
(10) The Office of Communications.

(b) The Board has no field organization; however, it provides for its recordkeeping responsibility by contract or interagency agreement. The recordkeeper may be located outside of the Washington, DC area. Thrift Savings Plan records maintained for the Board by its recordkeeper are Board records subject to these regulations. Board offices are presently located at 805 Fifteenth Street, NW., Washington, DC 20005.

§ 1631.4 Public reference facilities and current index.

(a) The Board maintains a public reading area located in Suite 500, 805 Fifteenth Street, NW., Washington, DC. Reading area office hours are from 9:00 A.M. to 5:00 P.M., Monday through Friday. In the reading area, the Board makes available for public inspection and copying all of the material required by 5 U.S.C. 552(a)(2), including all documents published by the Board in the **Federal Register** which are currently in effect.

(b) The FOIA Officer shall maintain an index of Board regulations, directives, bulletins, and published materials.

(c) The FOIA officer shall also maintain a file open to the public, which shall contain copies of all grants or denials of FOIA requests, appeals, and appeal decisions by the General Counsel. The materials shall be filed by chronological number of request within each calendar year, indexed according to the exceptions asserted, and, to the extent feasible, indexed according to the type of records requested.

§ 1631.5 Records of other agencies.

Requests for records that originated in another agency and that are in the custody of the Board may, in appropriate circumstances, be referred to that agency for consultation or

processing, and the person submitting the request shall be so notified.

§ 1631.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005. The words "FOIA Request" should be clearly marked on both the letter and the envelope.

(b) Each request must reasonably describe the record(s) sought, including, when known: Entity/individual originating the record, date, subject matter, type of document, location, and any other pertinent information which would assist in promptly locating the record(s). Each request should also describe the type of entity the requester is for fee purposes. See § 1631.11.

(c) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on the Board, seriously interfering with its normal functioning to the detriment of the Thrift Savings Plan, the Board may require the person or agent making the FOIA request to confer with a Board representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(d) Upon initial receipt of the FOIA request, the FOIA Officer will determine which official or officials within the Board shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

(e) Any Board employee or official who receives a FOIA request shall promptly forward it to the FOIA Officer, at the above address. Any Board employee or official who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this subpart requiring a written request according to the procedures set out herein.

§ 1631.7 Initial determination.

The FOIA Officer shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the FOIA Officer shall be final, subject only to administrative review as provided in § 1631.10.

§ 1631.8 Prompt response.

(a) When the FOIA Officer receives a request which he or she, in good faith, believes is not reasonably descriptive, he or she will so advise the requester within five workdays. The time limit for processing such a request will not begin until receipt of a request which reasonably describes the records being sought.

(b) The FOIA Officer shall either approve or deny a reasonably descriptive request for records within 10 working days after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from other establishments that are separate from the office processing the request (*e.g.*, the recordkeeper);

(2) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or to consult with two or more components of the Board having a substantial subject matter interest therein.

(c) When additional time is required for one of the reasons stated in paragraph (b) of this section, the FOIA Officer shall acknowledge receipt of the request within the 10 workday period and include a brief explanation of the reason for the delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional workdays.

§ 1631.9 Responses—form and content.

(a) When a requested record has been identified and is available, the FOIA officer shall notify the person making the request as to where and when the record is available for inspection or that copies will be made available. The notification shall also advise the person making the request of any fees assessed under § 1631.13 of this part.

(b) A denial or partial denial of a request for a record shall be in writing signed by the FOIA Officer and shall include:

(1) The name and title of the person making the determination;

(2) A statement of fees assessed, if any; and

(3) A reference to the specific exemption under the FOIA authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld; or

(4) If appropriate, a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 1631.8, and that the denial will be reconsidered as soon as the search or examination is complete; and

(5) A statement that the denial may be appealed to the General Counsel within 30 calendar days of receipt of the denial or partial denial.

(c) If, after diligent effort, existing requested records have not been found, or are known to have been destroyed or otherwise disposed of, the FOIA Officer shall so notify the requester.

§ 1631.10 Appeals to the General Counsel from initial denials.

(a) When the FOIA Officer has denied a request for records in whole or in part, the person making the request may, within 30 calendar days of receipt of the response of the FOIA Officer, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005 and clearly labeled as a "Freedom of Information Act Appeal."

(b) The General Counsel will act upon the appeal within 20 workdays of its receipts. The General Counsel may extend the 20 workday period of time by any number of workdays which could have been claimed and consumed by the FOIA Officer under § 1631.8 but which were not claimed or consumed in making the initial determination.

(c) The General Counsel shall decide the appeal in writing and send it to the requester.

(d) If the decision is in favor of the person making the request, the General Counsel shall order the subject records be promptly made available to the person making the request.

(e) A denial in whole or in part of a request on appeal shall set forth the exemption relied on and a brief explanation of how the exemption applies to the records withheld and the reasons for asserting it, if different from that described by the FOIA Officer under § 1631.9. The denial shall state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in Federal court in the district in which the person resides or has his principal place of business, in the district where the records are located, or in the District of Columbia.

(f) No personal appearance, oral argument, or hearing will ordinarily be permitted in connection with an appeal to the Board.

(g) On appeal, the General Counsel may reduce any fees previously assessed.

§ 1631.11 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters; commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of the Board is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents, nor waiver or reduction of fees, based on an assertion that disclosure would be in the public interest. The full allowable direct cost of searching for, and reviewing, records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, the Board will look to the use to which a requester will put the documents requested.

(2) When records are being requested by representatives of the news media, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The phrase "representatives of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (*e.g.* electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(4) For any other request which does not meet the criteria contained in paragraphs (a) (1) through (3) of this section, the fee policy of the Board is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. If computer search time is required, the first two hours of computer search time will be based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, the Board shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in the Board's systems of records shall continue to be treated under the provisions of the Privacy Act of 1974, which permit fees only for reproduction. The Board's fee schedule is set out in § 1631.14 of this part.

(b) Except for requests that are for a commercial use, the Board may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requestor may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30 calendar day period had been made to avoid fees. For requests made over a long period, however, the Board must have a reasonable basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, the Board must have a reasonable basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may the Board aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, the Board shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed $25, the Board shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and noncommercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed $25, the Board shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed $25, the Board shall not charge the requester any costs.

§ 1631.12 Waiver or reduction of fees.

(a) The Board may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board or Federal Government and is not primarily in the commercial interest of the requester. In making its decision on waiving or reducing fees, the Board will consider the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the Board or the Government,

(2) Whether the disclosure is likely to contribute to an understanding of Government operations or activities (including those of the Board),

(3) Whether the disclosure is likely to contribute significantly to public understanding of TSP or Government operations or activities;

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and

(5) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) A fee waiver request must indicate the existence and magnitude of any commercial interest that the requester has in the records that are the subject of the request.

§ 1631.13 Prepayment of fees over $250.

(a) When the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Board may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days of the date of the billing), the Board may require the requester to pay the full amount owed plus any applicable interest as provided in § 1631.14(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When the Board acts under paragraph (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Board has received fee payments under paragraph (a) or (b) of this section.

§ 1631.14 Fee schedule.

(a) *Manual searches for records.* The Board will charge at the salary rate(s) plus 16 percent (to cover benefits) of the employee(s) conducting the search. The Board may assess charges for time spend searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* The Board will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary, plus 16 percent, apportionable to the search. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ × 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ × 14 inches, or whose physical characteristics do not permit reproduction by routine electrostatic copying, shall be the direct cost of reproducing the records through Government or commercial sources. If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester had indicated in advance his/her willingness to pay fees as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, the Board shall charge the actual cost, including operator time, of producing the tape or printout. If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, the Board shall charge the actual direct costs of producing the document(s). If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. The Board may begin assessing interest charges on the amount billed starting on the 31st calendar day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code, and it will accrue from the date of the billing.

(e) The Board shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Board may choose to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, the Board will inform requesters of the steps necessary to obtain records from those sources.

§ 1631.15 Information to be disclosed.

(a) In general, all records of the Board are available to the public, as required by the Freedom of Information Act. However, the Board claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from non-U.S. Government source.* (1) Board personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source.

Exemption 4 permits withholding of "trade secrets and commercial or financial information obtained from a person as privileged or confidential." Exemption 6 permits withholding certain information, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy."

(2)(i) *Exemption 4.* Commencing January 1, 1988, the submitter of confidential commercial information

must, at the time the information is submitted to the Board or within 30 calendar days of such submission, designate any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. The submitter as part of its submission, must explain the rationale for the designation of the information as commercial and confidential.

(ii) Confidential commercial information means records provided to the Board by a submitter that arguably contains material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(iii) After January 1, 1988, a submitter who does not designate portions of a submission as confidential commercial information waives that basis for nondisclosure unless the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial harm to the competitive position of the submitter.

(3) When the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial competitive harm to the submitter, and has no designation from the submitter, it shall notify the submitter of the following:

(i) That a FOIA request has been received seeking the record,

(ii) That disclosure of the record may be required,

(iii) That disclosure of the record could result in competitive harm to the submitter,

(iv) That the submitter has a period of seven workdays from date of notice within which it or a designee may object to the disclosure its records, and

(v) That a detailed explanation should be submitted setting forth all grounds as to why the disclosure would result in substantial competitive harm, such as, the general custom or usage in the business of the information in the record, the number and situation of the persons who have access to the record, the type and degree of risk of financial injury that release would cause, and the length of time the record needs to be kept confidential.

(4) In exceptional circumstances, the Board may extend by seven workdays the time for a submitter's response for good cause.

(5) The Board shall give careful consideration to all specified grounds for nondisclosure prior to making an administrative determination on the issue of competitive harm.

(6) Should the Board determine to disclose the requested records, it shall provide written notice to the submitter, explaining briefly why the submitter's objections were not sustained and setting forth the date for disclosure, which date may be less than 10 calendar days after the date of the letter to the submitter.

(7) A submitter who provided records to the Board prior to January 1, 1988, and did not designate which records contain confidential commercial information, shall be notified as provided in § 1631.15(b)(3). After making such notification, the Board will follow the procedures set forth in §§ 1631.15(b)(4)–(6).

(8) The Board will, as a general rule, look favorably upon recommendations for withholding information about ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patentable; or about a unique use of equipment which is specifically outlined.

(9) The Board will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(10) The Board will withhold all cost data submitted, except the total estimated costs from each year of a contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes that some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(11) *Exemption 6.* This exemption is not a blanket exemption for all personal information submitted by a non-U.S. Government source. The Board will balance the need to keep a person's private affairs from unnecessary public scrutiny with the public's right to information on Board records. As a general practice, the Board will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Depending upon the circumstances, the Board may release most information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal, such as the names of staff persons, which might, if released, constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

§ 1631.16 Exemptions.

The Freedom of Information Act exempts from all of its publication and disclosure requirements nine categories of records which are described in 5 U.S.C. 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

§ 1631.17 Deletion of exempted information.

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Board with deletions. To each such record, the Board shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

§ 1631.18 Annual report.

The Executive Director shall submit annually, on or before March 1, a Freedom of Information report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate. The report shall include those matters required by 5 U.S.C. 552(d).

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 1631.30 Purpose and scope.

This subpart contains the regulations of the Board concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of:

(a) Any material contained in the files of the Board;

(b) Any information relating to materials contained in the files of the Board; or

(c) Any information or material acquired by an employee of the Board as a part of the performance of his or

her official duties or because of his or her official status.

§ 1631.31 Production prohibited unless approved by the Executive Director.

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce any material contained in the files of the Board or disclose any information or produce any material acquired as part of the performance of his or her official status without the prior approval of the Executive Director or his or her designee.

§ 1631.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Board for the production of material or the disclosure of information described in § 1631.31, he or she shall immediately notify the Executive Director or his or her designee. If possible, the Executive Director or his or her designee shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Executive Director or his or her designee are received, an attorney designated for that purpose by the Board shall appear with the employee or former employee upon whom the demand has been made and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Executive Director or his or her designee. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Executive Director.

§ 1631.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 1631.32(b) pending receipt of instructions from the Executive Director, or his or her designee, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Executive Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. [*United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951)].

[FR Doc. 90-23586 Filed 10-5-90; 8:45 am]
BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Part 97

[Docket No. 89-066]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service of the United States Department of Agriculture at laboratories, border ports, ocean ports, and airports. We are amending the regulations by: (1) Requiring agents, brokers, or principals who have not previously requested Sunday, holiday, or overtime inspection services from the Animal and Plant Health Inspection Service to make payment before these services are provided, and to continue paying in this manner until further notice from the Animal and Plant Health Inspection Service; (2) requiring certain delinquent debtors to make payment before Sunday, holiday, or overtime inspection services are provided; and (3) suspending Sunday, holiday, or overtime inspection services for those debtors with prolonged delinquencies. These changes will assist us in collecting debts, and will reduce the financial loss we are incurring because of unpaid debts.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Director, Resource Management Support Staff, PPQ, APHIS, USDA, Room 621, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7764; Louise Lothery, Director, Resource Management Staff, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7517; or Charles Gernert, Supervisory Accountant, Budget and Accounting, APHIS, USDA, Room 245, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.1 and 9 CFR 97.1 (referred to below as "the regulations") provide a system for obtaining inspection, laboratory testing, certification, and quarantine services pertaining to the importation and exportation of plants, plant products, animals, animal byproducts, or other commodities during Sundays, holidays, or other times outside the established hours of service.

On February 17, 1989, we published in the **Federal Register** (54 FR 7195-7196, Docket No. 88-097), a document proposing to amend 7 CFR 354.1 and 9 CFR 97.1 by: (1) Requiring the name, address, and telephone number of principals when they request Sunday, holiday, or overtime inspection services through authorized agents or brokers; (2) requiring certain delinquent debtors to pay immediately when Sunday, holiday, or overtime inspection services are provided; and (3) suspending Sunday, holiday, or overtime inspection services for those debtors with prolonged delinquencies.

Our proposal invited the submission of written comments, which were required to be postmarked or received on or before April 18, 1989. We received three comments, two from Animal and Plant Health Inspection Service (APHIS) field personnel and one from a livestock shipping agency. All three commenters either opposed the proposed rule or expressed reservations concerning it. the comments are discussed below.

Comments

As proposed, paragraph (d) of §§ 354.1 and 97.1 would require agents or brokers to provide us with the name, address, and telephone number of their principals when requesting Sunday, holiday, or overtime services. One commenter stated that this requirement would greatly increase the information gathering burden on shipping companies; that it is inappropriate to place this burden on all agents or brokers because of the irresponsible behavior of a few; and that we should implement a credit approval system for brokers or agents instead of implementing the debt management program described in the proposed rule. Another commenter stated that determining the owner (principal) of a given animal within a shipment can sometimes be difficult and enormously time-consuming, since one shipment may contain 40 to 70 individually-owned animals. The commenter also stated that some shipments involve multiple-

ownership situations, such as when an animal is owned by a partnership, consortium, or other business group. This commenter stated that clarifying ownership in such situations could create considerable delays, and that such a situation would be undesirable when live animals are involved.

Both of the above commenters also stated that the process of clarifying ownership or collecting payment is further complicated by the fact that many principals are residents of foreign countries.

We agree that the proposed requirement could place unrealistic information-gathering responsibilities on agents or brokers, and that collecting debts directly from principals may not be a practical, productive, or feasible approach to debt management. We are therefore eliminating from our final rule any information-gathering requirements on the part of the agent or broker, and are instead implementing a credit approval system as suggested by one of the commenters.

To this end, we will amend the regulations to require an agent, broker, or principal who has not previously requested Sunday, holiday, or overtime work from us—that is, an agent, broker, or principal with whom we have not previously worked and whose degree of financial stability or credit worthiness is unknown to us—to pay us before service is provided. The prepayment figure will be based on the inspector's estimate of the cost of providing service. Any difference between the inspector's estimate and the actual amount owed APHIS will be resolved later, with APHIS either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

We will continue to require prepayment from the agent, broker, or principal until we have determined that the agent, broker, or principal has established an acceptable credit history with us. We will reserve the right to continue requiring prepayment from an agent, broker, or principal indefinitely.

The third comment we received expressed reservations concerning proposed paragraph (e) of §§ 354.1 and 97.1, which would require agents or brokers who are in excess of 60 days delinquent in paying for services, to pay the APHIS inspector at the time Sunday, holiday, or overtime services are provided.

The commenter stated: "Trying to come up with a fair amount to collect from the exporter or his agent at the time of loading would be very difficult. The exporter and his agent depart at the time the initial loading and paperwork is completed. The overtime sheet is not completed until after the flight has left. The reason for this is that we cannot be certain of [the] time of [the flight's] departure, and the quitting time of the [APHIS inspector] involved . . ."

We agree. To deal with this situation, we are amending the regulations to require that inspectors estimate the amount of the overtime service fee to be charged, and collect that amount from the agent, broker, or principal before the loading operation begins. Any difference between the inspector's estimate and the actual amount owed APHIS will be resolved later, with APHIS either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

The commenter also expressed concern about the potential security risks involved if an APHIS inspector is required to accept large sums of cash from an agent or broker during late night hours, when many export shipments are handled.

We agree that this presents a potential security risk, and are changing the final rule to state that inspectors will accept cash only between the hours of 7 a.m. to 5 p.m. and only at a location designated by the APHIS inspector.

Miscellaneous

Since we published our proposed rule on February 17, 1989, we have made certain nonsubstantive changes in the regulations. In documents published in the **Federal Register** on April 4, 1989 (54 FR 13506, and 13515–13516) we amended parts 354 and 97 by removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing all references to "Plant Protection and Quarantine" and "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." This final rule reflects these amendments made since our February 17, 1989, proposal.

We have also made other nonsubstantive changes in the final rule for purposes of clarity.

Based on the rationale set forth in the proposal and in this document, we are adopting the proposed rule as a final rule, with the changes noted.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule will have no economic impact on small entities, since it will not increase or decrease the amount of money they owe us. It will, however, require these entities to pay us promptly. We do not believe that making prompt payments will impose a financial burden on these small entities.

In addition, paying us for debts already accumulated for services rendered will impose no additional financial burden on those small entities requesting Sunday, holiday, or overtime inspection services from us. The entities currently in debt to us owe only small amounts—on the average, less than $1,000 each.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 0579–0055.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants, (Agriculture), Quarantine, Transportation.

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 7 CFR part 354 and 9 CFR part 97 are amended as follows:

Title 7

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for 7 CFR part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.1 is amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 354.1 Overtime work at border ports, sea ports, and airports.

* * * * *

(d)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity acting as an agent or broker by requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector on behalf of any other person, firm, partnership, corporation, or other legal entity (principal), and who has not previously requested such service from an Animal and Plant Health Inspection Service inspector, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the Animal and Plant Health Inspection Service determines that the agent, broker, or principal has established an acceptable credit history.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(e)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector, and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any principal, or any person, firm, partnership, corporation, or other legal entity who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

Title 9

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

3. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

4. Section 97.1 is amended by adding paragraphs (d), (e), and (f) to read as follows:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.

* * * * *

(d)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity acting as an agent or broker by requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector on behalf of any other person, firm, partnership, corporation, or other legal entity (principal), and who has not previously requested such service from an Animal and Plant Health Inspection Service inspector, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the Animal and Plant Health Inspection Service determines that the agent, broker, or principal has established an acceptable credit history.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(e)(1) Any principal, or any person, firm, partnership, corporation, or other legal entity requesting Sunday, holiday, or overtime services of an Animal and Plant Health Inspection Service inspector, and who has a debt to the Animal and Plant Health Inspection Service more than 60 days delinquent, must pay the inspector before service is provided.

(2) Since the payment must be collected before service can be provided, the Animal and Plant Health Inspection Service inspector will estimate the amount to be paid. Any difference between the inspector's estimate and the actual amount owed to the Animal and Plant Health Inspection Service will be resolved as soon as reasonably possible following the delivery of service, with the Animal and Plant Health Inspection Service either returning the difference to the agent, broker, or principal, or billing the agent, broker, or principal for the difference.

(3) The prepayment must be in some guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) For security reasons, cash payments will be accepted only from 7 a.m. to 5 p.m., and only at a location designated by the Animal and Plant Health Inspection Service inspector.

(f) Reimbursable Sunday, holiday, or overtime services will be denied to any principal, or any person, firm, partnership, corporation, or other legal entity who has a debt to the Animal and Plant Health Inspection Service more than 90 days delinquent. Services will be denied until the delinquent debt is paid.

Done in Washington, DC, this 3rd day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-23766 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1137

[DA-90-030]

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues the suspension of certain provisions of the Eastern Colorado milk order. These pooling standards have been suspended during the past four years. This action again suspends for the months of September 1990–February 1991 the limit on the period of automatic pool plant status for supply plants that met the shipping standards during a prior shipping season. It also extends for the months of September 1990 through August 1991 the suspension of the "touch-base" requirement which provides that a member-producer's milk be received at least three times each month at a pool distributing plant to qualify the dairy farmer's milk for diversion and the percentage limits on the amount of milk that a cooperative may deliver directly to manufacturing plants and remain pooled and priced under the order. These actions were requested by a cooperative association representing producers supplying the market. The changes were not opposed and are needed to prevent uneconomic milk movements.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 23, 1990; published August 29, 1990 (55 FR 35321).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 29, 1990 (55 FR 35321) concerning a proposed suspension of certain provisions of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1990 through February 1991:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1990 through August 1991:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence the words "30 percent in the months of March, April, June, July, and December, and 20 percent in other months of" and the word "distributing".

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested a continuation of the suspension of the aforementioned provisions to prevent the uneconomical movement of milk for the sole purpose of pooling the milk of cooperative association producers who have been historically associated with the Eastern Colorado market. For the months of September 1990 through February 1991, the suspension again removes the limit on the period of automatic pool plant status for supply plants which met the pool shipping standards during a previous September through February shipping season. For the months of September 1990 through August 1991, the suspension continues to remove the requirement that three deliveries of a member-producer's milk be received at a pool distributing plant each month to qualify the dairy farmer's milk for diversion and the percentage limits on the aggregate amount of milk that a cooperative may divert to nonpool plants for its account. These pooling provisions have been suspended during the past four years.

Statistical data for the Eastern and Western Colorado markets [1] show that a lower percentage of the producer milk supply is needed now to fulfill the fluid needs of handlers than when these provisions were suspended initially four years ago. For instance, in 1989, only about 53 percent of the markets' producer milk deliveries was used for fluid purposes compared with almost 62 percent in 1986. Since there is plenty of milk available now to supply distributing plants, the primary concern of Eastern Colorado supply organizations is the orderly disposition of the milk that exceeds the needs of fluid plants. This and the prior suspension actions were taken in recognition of that concern.

It is evident from the foregoing that there will be ample supplies of locally produced milk available to meet the fluid needs of Eastern Colorado distributing plants on a direct-ship basis, as Mid-Am states, without requiring supply plants to make qualifying shipments during the current September–February shipping season. Additionally, there is no need to require that a member-producer's milk be received at least three times each month at a pool distributing plant or that the percentage restrictions on diversions to nonpool plants by cooperatives apply during September 1990 through August 1991.

Suspension of these performance standards will continue to give cooperatives additional flexibility in handling the market's reserve milk and thereby will promote the orderly disposition of the milk that is not needed at Eastern Colorado distributing plants.

[1] Data for the two markets are combined to avoid revealing confidential information (there are less than three handlers regulated under the Western Colorado order).

Interested parties were given an opportunity to comment on this proposed action. No opposing views were received. Comments supporting the proposed action were filed by Western Dairymen Cooperative, Inc., a cooperative association representing dairy farmers throughout the Intermountain region. Mid-Am also filed views in support of its request.

Without this action, to maintain pool status under the order for distant producers who have been associated with this market for several years, Mid-Am would have to ship milk from farms located in western Nebraska and western Kansas to Denver-area distributing plants. The distant milk would displace locally produced milk and would result in increased shipments from the Denver area to manufacturing plants many of which would be located in the areas where the distant milk was produced.

In view of the foregoing, it is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive hauling and handling substantial amounts of milk from producers who have regularly supplied this market would be excluded from the marketwide pool thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1137.7(b) of the Eastern Colorado order are hereby suspended for the months of September 1990–February 1991 and the following provisions in § 1137.12(a)(1) of Eastern Colorado order are hereby suspended for the months of September 1990–August 1991.

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.7 [Temporarily Suspended in Part]

2. In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August" are suspended.

§ 1137.12 [Temporarily Suspended in Part]

3. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and the word "distributing" are suspended.

Signed at Washington, DC, on: October 2, 1990.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–23779 Filed 10–5–90; 8:45 am]

BILLING CODE 3410–02–M

COMMODITY FUTURE TRADING COMMISSION

17 CFR Parts 3 and 171

Commission Review of National Futures Association Decisions In Disciplinary, Membership Denial, Registration and Membership Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted rules establishing standards and procedures for Commission review of decisions of registered futures associations such as the National Futures Association ("NFA"). The Commission rules cover review of NFA decisions in four types of actions: Disciplinary actions, membership denial actions, registration actions and member responsibility actions. The rules establish a common procedure for seeking review and a stay of a final decision by NFA in disciplinary, membership denial and registration actions, and separate procedures for seeking review and a stay of NFA decisions in member responsibility actions. In adopting these rules, the Commission has promulgated standards for review that will permit NFA to exercise its expertise and independent judgment in proceedings subject to these rules while providing a person aggrieved by the result of NFA's action an effective means to obtain relief from prejudicial errors. These rules shall apply in their entirety to all requests for Commission review of NFA actions, and matters relating thereto, filed on or after October 31, 1990.

EFFECTIVE DATES: October 31, 1990.

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SUPPLEMENTARY INFORMATION:

I. Background

On June 15, 1990 the Commission published proposed rules establishing standards and procedures for its review of decisions of registered futures associations such as NFA in disciplinary actions, membership denial actions, registration actions and member responsibility actions. 55 FR 24254. In proposing these rules the Commission sought to promulgate standards for review that will permit NFA to exercise its expertise and independent judgment in proceedings subject to these rules and to establish an appellate process that is comprehensive, balanced, efficient and consistent with principles of fundamental fairness.

In response to its request for public comment the Commission received letters from NFA and from members of the Futures Regulation Committee ("Committee") of the Section of Business Law of the American Bar Association. Both comment letters generally were supportive of the proposed rules. The Commission has carefully considered the comments in those letters and has determined that the rules should be adopted with certain modifications and clarifications. Among these are changes to clarify the Commission's review role, expansion of those matters excluded from Commission review, and the addition of a definition of "interested persons" who may intervene in a proceeding. A discussion of the comments and of the substantive revisions to the rules is included below.

Comments on and Revisions to the Standards for Review

NFA's comments reflect a general concern that in formulating these rules the Commission did not simply parallel the existing part 9 regulations governing

its review of exchange disciplinary actions. While the Commission has noted that the standards and procedural protections available in NFA disciplinary, membership denial and registration actions should generally be similar to those provided by parts 8 and 9 of its regulations,[1] the Commission also recognizes that its standards of review for NFA actions derive from different statutory provisions and reflect difference between NFA and exchanges. Unlike exchanges whose contracts are approved by the Commission pursuant to its statutory authority under Section 5 of the Commodity Exchange Act ("Act"), NFA is not a voluntary membership organization. With a few narrow exceptions, persons who wish to conduct business in the futures industry must be members of a registered futures association like NFA. In recognition of the significant impact of the membership criteria and disciplinary determinations of a registered futures association with mandatory membership, Congress has established in section 17 of the Act specific requirements for its membership standards, disciplinary rules and procedural standards. In addition to the authority specifically granted by Congress to all futures associations registered under the Act, NFA has authority specifically delegated to it by the Commission to make registration determinations for most of the categories of registration contemplated by the Act.

Among other comments, the Committee letter noted with approval the Commission's recognition of the need for separation between those agency employees who are or have been engaged in an investigative or prosecuting function related to a proceeding and those employees who give advice to Commissioners and members of their staffs concerning the merits of a decision. In this context, the Committee urged that the Commission codify its procedures to insure separation of functions as part of these final rules. In the Commission's view, its internal procedures have proven adequate and need not be codified in these rules.

A. Appellate Standards For Final Decisions in Disciplinary, Membership Denial and Registration Actions

The standards set forth in rule 171.34 are applicable to appeals from final decisions by NFA in disciplinary, membership denial and registration actions. While the standards for disciplinary actions differ slightly from those for membership denial or registration actions, each set of standards shares the following characteristics: (1) NFA's procedural conduct in the proceeding is reviewed for consistency with both relevant NFA rules and applicable principles of fundamental fairness; (2) NFA's factual findings are evaluated for consistency with the "weight of the evidence" standard; and (3) NFA's conclusion is examined for consistency with the purposes of the Commodity Exchange Act.[2]

The differences in the standards correspond to distinctions in the description of the factors NFA is expected to apply in reaching its decision in each type of action. These distinctions are reflected in the Act, the Commission's regulations and in the rules promulgated by NFA. The specific formulation of each review standard should help parties to Commission appellate proceedings focus their arguments on the standards applied by NFA and the issues that are of primary concern to the Commission. For this reason, these standards should serve as a guide both to NFA in making its determinations and to the parties involved in an appeal from NFA's decision.

NFA's comment letter observes that rule 171.34 deviates from the standards established in 17 CFR 9.33 for review of exchange actions both in requiring a "weight of the evidence" standard and a determination that the sanction imposed be not excessive or oppressive. The Commission wishes to point out that the latter standard is set forth expressly in section 17 of the Act, and that the Act does not impose parallel requirements for Commission review of exchange actions. NFA also suggests that the language in Rule 171.34 requiring the Commission to "consider whether" NFA decisions were made in accordance with the stated requirements be modified, consistent with 17 CFR 3.87 (which is being repealed along with other portions of part 3) to require the Commission to affirm NFA's decision unless it finds that the decision is not in accordance with the requirements. The Commission has determined that such a modification is consistent with the purposes of these regulations, and has modified the rule accordingly.

The Committee noted that § 171.34 (as well as § 171.46, which sets forth standards of Commission review of NFA member responsibility actions) does not require that persons subject to disqualification under section 8a(2) of the Act be afforded an opportunity to present evidence of mitigation or rehabilitation. The Committee suggested that, consistent with the Commission's recent decisions in *In the Matter of Kangles*, CFTC Docket No. SD–88–4 (CFTC June 6, 1990), and *In the Matter of Chamberlain*, CFTC Docket No. SD–88–6 (CFTC June 6, 1990), action on this section should be deferred and considered in the context of the rulemaking announced in footnote 33 of the *Kangles* and *Chamberlain* decisions. Alternatively, the Committee proposes that NFA be directed to permit applicants an opportunity to present evidence of mitigation or rehabilitation. *Kangles* and *Chamberlain*, as well as *In re Horn*, *supra*, establish that an applicant may be afforded an opportunity to show mitigation or rehabilitation. These decisions, like all Commission decisions regarding the proper application of the Act's registration provisions are already binding on NFA. It is therefore the Commission's view that codification of this standard is unnecessary.

B. Standards Applicable to Requests for Relief Relating to the Effective Date of a Final Decision by NFA in a Disciplinary, Membership Denial and Registration Action

Under the rules NFA must promptly mail a notice to all parties after it issues a final decision in a disciplinary, membership denial or registration action (rule 171.21). NFA's decision (and any relief ordered therein) will be effective thirty days after NFA mails the required notice (rule 171.22). An aggrieved party similarly has a thirty day period to mail to the Commission a notice of appeal from NFA's decision (rule 171.23). Thus, as a general rule, there will be a thirty day delay between the mailing of the notice of NFA's decision and the date the decision goes into effect. During that period, an aggrieved individual may file a notice of appeal with the Commission. The filing of a notice of appeal will not stay the effective date of an NFA decision. Thus, as a general rule, NFA's decision will be effective while the Commission reviews the merits of the appeal and the parties will be bound by that decision until the Commission or a court rules otherwise.

Rule 171.22(b) provides an avenue for NFA to seek an earlier effective date for its decision and provides a similar avenue for an aggrieved party to seek to stay the effective date of NFA's decision

[1] *In re Application of the National Futures Association*, Order Granting Registration and Approving Rules (CFTC Sept. 22, 1981).

[2] The standards for membership and registration actions are to be read consistently with prior case law, *e.g.*, *In re Horn* and *Grabarnick*, *supra*. *See also In re Walter*, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 24,215 (CFTC Apr. 14, 1988).

beyond the thirtieth day. In either case, the petition for relief must be mailed within ten days of the date NFA mails the notice of its decision. Any party opposing the request for relief may respond within five days of the date the petition for relief was mailed. If the Commission believes that it is necessary to the meaningful consideration of the petition, it need not await that response to act. If the Commission does not affirmatively act on the request prior to the decision's effective date under the general rule, the request will be deemed denied.

The Commission will review either type of request for relief under the standards set out in rule 171.22(c). In general, these are the standards applied by the Commission in determining whether a stay pending judicial review is appropriate in a Commission enforcement case.[3] In interpreting these standards, the Commission employs the same mode of analysis used by courts in determining whether extraordinary injunctive relief is appropriate.[4] The burden is on the petitioning party to justify a departure from the general rule. The Commission has rarely granted such motions in the context of its other appellate programs, and while the specific outcome in any case will turn on the particular facts and circumstances, the Commission does not anticipate that such petitions will be successful with any great frequency in the context of decisions by NFA.

The Committee commented that the use of the conjunction "and" at the end of each standard for a stay in § 171.22(c) (and in the similar standards in § 171.43(d) applicable to member responsibility actions) suggests that a party would be required to meet each and every standard to obtain a stay. The Committee suggested that the Commission retain the flexibility to balance the relative weight to be accorded each of the standards by deleting the conjunction "and." The Commission does not believe the change is necessary. As noted above, the Commission uses the same method of analysis as courts in considering petitions for stay—that is, to weigh the standards to achieve a fair and equitable result. This approach has been followed by the Commission in considering requests for stays of exchange final decisions under the part 9 Rules, which similarly use the conjunction "and" following each standard. *Karkazis* v. *CME*, CFTC Docket No. 90-E-7 (CFTC September 14, 1990).

In its comment letter, NFA proposed that the separate provisions governing stays from NFA final decisions in disciplinary, membership and registration actions and member responsibility actions be incorporated into one section. The Commission has considered this proposal and has determined for purposes of clarity and ease of reference to the relevant provisions to retain the separate structure.

C. Review Standards Applicable to Final Decisions of NFA in Member Responsibility Actions

A member responsibility action is an extraordinary procedure that is commenced when NFA has reason to believe that summary and expeditious action against a member is necessary to protect the commodity futures markets, customers or other NFA members. In making its Report to Congress regarding NFA in 1986, the Commission noted that it generally regarded the member responsibility action as a "powerful and appropriate tool for self regulatory bodies such as NFA to obtain immediate compliance." A member responsibility action is a type of disciplinary action, and is thus subject to the standards set forth in section 17(b)(9), (i)(1) and (i)(2) of the Act and § 170.6 of the regulations. However, because of the distinct remedial focus of these actions, the Commission is proposing specific standards to guide its consideration of appeals from final decisions in member responsibility actions.

Under the adopted rules, final decisions of NFA in member responsibility actions will be reviewed under the standards of rule 171.46. These standards are similar in many respects to those the Commission will apply in the review of other disciplinary actions under rule 171.34(a). The primary difference between the review standard for final decisions in member responsibility actions and those for final decisions in other disciplinary actions is in the focus of the factual element of the review standard. In the typical disciplinary action, the primary purpose of the proceeding is to evaluate past conduct in terms of NFA's rules so that violations of those rules may be sanctioned. The goal of a membership responsibility action, however, is to prevent future harm to the commodity futures markets, customers or members of NFA, rather than to sanction past wrongdoing.[5] In view of this remedial focus and the strict limitation of these proceedings to situations where immediate intervention is imperative, the factual review should not be limited to appellant's alleged wrongful conduct but should include all factual matters relating to NFA's conclusion that resort to a summary procedure was necessary. The nature and extent of the threat to the commodity futures markets, customers and members of NFA, as well as the likelihood the threat will continue, diminish or grow, are all factual issues that may affect NFA's reason for commencing a member responsibility action even if the factual record is not completely developed on the precise nature of appellant's violative conduct. In recognition of this important distinction, the Commission has adopted the standard set forth in rule 171.46 for review of NFA's factual determinations in member responsibility actions.

D. Standards Applicable to Requests for a Stay of the Effective Date of a Member Responsibility Action

In 1986, the Commission asked Congress to amend the automatic stay provision of section 17(h) of the Act in order to remove it as an impediment to NFA's effective use of member responsibility actions. In response, Congress enacted the current section 17(h)(3)(A) of the Act. Congress also enacted a requirement that the Commission establish standards for expedited procedures to be used in the consideration of a request for a stay. *See* section 17(h)(3)(B). Accordingly, the Commission had adopted two rules that will permit NFA members that are the subject of a member responsibility action to seek an immediate stay from the Commission when they are notified that the suspension, restriction or remedial action ordered in a member responsibility action has become or will be effective. The standards to be applied under rules 171.41 and 171.43 are consistent with recent court precedent and are similar to the standards set forth in rule 171.22(c). Consistent with the approach generally reflected in these rules, the distinctions in the language of each rule reflect the particular context

[3] *See, e.g., In re Sanchez,* [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,056 (CFTC March 23, 1984); *In re Gimbel,* [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,241 (CFTC May 17, 1988). The factors considered include the likelihood of success on the merits, the evidence that denial of the motion will result in irreparable harm, the effect on the party opposing the grant of relief and the effect on the public interest.

[4] *See, e.g., Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 842 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 259 F.2d 921 (D.C. Cir. 1958).

[5] Pursuant to NFA Rule 3-13, a member responsibility action does not preclude a disciplinary action based on the same facts.

in which the general standard is likely to be called into play.

Rule 171.41(d) applies to a request that the effective date of a member responsibility action brought by NFA be stayed while NFA conducts further proceedings under its rules. This rule will apply only in those cases in which NFA determines that the suspension, restriction or remedial action ordered in the member reponsibility action will be effective prior to the time the member who is the subject of the action is accorded an opportunity for a hearing. In this situation, the likelihood of petitioner's success on the merits of his challenge to NFA's action generally turns on whether, under the cirumstances, NFA's action was inconsistent with fundamental fairness—deprived the member of the right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner. That determination, in turn, requires a balancing of factors. *Woods* v. *Federal Home Loan Bank Board*, 826 F.2d 1400, 1411 (5th Cir. 1987).[6] Even if this balancing process does not fall in favor of NFA's decision to take summary action, however, the petitioner will not be entitled to a stay pursuant to rule 171.41(d) absent a showing that denial of the stay would result in irreparable harm.

Under rule 171.41, if a petition for stay is denied, NFA shall continue its action in accordance with the applicable rules of the association. If a stay is granted by the Commission, the action will be remanded to NFA for further proceedings as provided in the Commissioner's Opinion and Order. Unless specifically ordered by the Commission, NFA shall remain free to make the suspension, restriction or remedial action ordered in the member responsibility action effective at the time a final decision in the action is issued (rule 171.41(f)).

Rule 171.43(d) defines standards applicable to petitions for a stay of the effective date of NFA's final decision in a member responsibility action. A decision will be considered final for purposes of this rule when the member has not right to additional procedure from NFA relating to the member responsibility action.[7] The standards are substantively equivalent to the standards applicable to final decisions in other disciplinary actions under rule 171.22(c). Because NFA is authorized to make effective the suspension, restriction or remedial action ordered in the member responsibility action at the time it issues its decision, however, the Commission may not receive a petition for a stay under rule 171.43 until after NFA's action is effective. In these circumstances, the rule provides that the Commission will not delay its decision on the petition to await receipt of NFA's response.[8]

II. General Appellate Procedure

A. Scope

The Commission intends to accept appeals from almost all NFA final decisions in disciplinary,[9] membership denial, registration and member responsibility actions.[10] Excluded from the scope of these rules are decisions by NFA in disciplinary actions when the member seeking to appeal to the Commission has knowingly failed to pursue his right to appeal an adverse decision to the NFA Appeals Committee in accordance with NFA rules. In adopting such an exclusion, the Commission does not intend to discourage appeals from such disciplinary actions but rather to encourage NFA members to comply with reasonable procedural rules that allow NFA to consider in the first instance problems arising in decisions by its regional Business Conduct Committees. In order to assure that this exclusion does not result in any undue limitation on the right to appeal granted by section 17(h)(2) of the Act, rule 171.1(b) indicates that an appeal of a matter subject to the exclusion will not be dismissed if extraordinary circumstances otherwise warrant consideration of the appeal.

NFA in its comments proposed that the Commission also exclude from the scope of these rules NFA decisions which result in the suspension of a member based solely on that member's failure to pay NFA dues or arbitration awards. The Commission agrees that suspension for non-payment of dues should not generally be considered a disciplinary action subject to Commission review,[11] and accordingly has amended § 171.1(b) to exclude such NFA actions from the scope of these rules. The Commission is reluctant at this time, however, to exclude suspension of a member for failing to pay arbitration awards. When the Commission has excluded NFA arbitration decisions themselves from its review, one of the reasons it has done so is that these decisions can be reversed in the court system. In contrast, membership suspension raises somewhat different issues which generally go to the core of the Commission's role in reviewing NFA actions affecting membership status. Pending additional experience on the issue the Commission has determined not to exclude such NFA action from its appellate jurisdiction.

NFA also noted, citing new Commission rule 1.63, that it has adopted standards for service on NFA's Board of Directors, Business Conduct Committees and arbitration panels. NFA suggested that its actions disqualifying individuals for service based on certain disciplinary sanctions should be excluded from Commission review under § 171.1(b). The Commission concurs with this suggestion and has amended that section to exclude disqualification from service for these reasons from the scope of these rules. Finally, NFA suggested that removal of a director by a two-thirds vote of the Board of Directors if it is deemed in the best interest of NFA should not be deemed a disciplinary action within the scope of Commission review. The Commission also agrees that removal of a director generally would not be subject to its review. However, if the director is also a member or associate of a member of NFA, his or her removal may in unusual circumstances raise reviewable issues. For example, the Commission might wish to review removal if the member raised a

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[6] The factors include: the regulatory interest that justifies summary action, the nature of the private interests of those affected by the summary action, the risk of erroneous deprivation through the challenged procedures and the probable value of additional or substitute procedural safeguards. *Id.* at 1411, *citing Brock* v. *Roadway Express Inc.*, 107 S. Ct. 1740, 1747 (1987). 481 U.S. 252, 263. *See also, Morton* v. *Beyer*, 822 F.2d 364, 367–71 (3d Cir. 1987).

[7] A member has no general right to appeal the decision in a member responsibility action within NFA, but NFA rules do permit an Appeals Committee to take review of a decision on its own motion within 15 days of the date of the decision. If the Appeals Committee chooses to take review of a matter, the Commission would likely stay its own proceedings on any appeal to the Commission pending completion of the Appeals Committee determination. If the suspension, restriction or remedial action ordered in the decision are effective pending the Appeals Committee review, however, fundamental fairness requires that the Commission consider a petition for a stay of the effective date of the decision filed by an aggrieved party without regard to the possibility of *sua sponte* review by NFA's Appeals Committee.

[8] In light of the importance of expedited action in such a situation, rule 171.42 requires that NFA give the affected party and the Commission telephonic notice, in addition to written notice, when it makes its decision in a member responsibility action effective at the time of issuance.

[9] The definition of disciplinary action under rule 171.2(b) includes all proceedings brought by NFA to enforce its rules that may result in suspension, censure, bar from association with a member or a fine in excess of $100. The latter limitation reflects the amount of the appellate filing fee.

[10] The Commission notes that interim notices issued in NFA membership and registration actions do not constitute "final decisions" of NFA.

[11] *Cf. Davis and Partners, Ltd.* v. *NYFE*, CFTC Docket No. 90–E–4 (CFTC March 22, 1990).

colorable claim that removal was based on the fact that he or she had provided evidence of wrongdoing contrary to the interests of other NFA members.[12] Accordingly, the Commission does not believe removal actions should be excluded entirely from the scope of these rules.

Also excluded are decisions by NFA in arbitration actions. The Commission believes that NFA performs an important role as a self-regulatory organization through its arbitration program and should be responsible for the fairness and accuracy of the results reached in arbitration actions. The Commission also believes that creation of a formal system for Commission review of NFA arbitration actions would interfere with the simplicity and efficiency of that system of dispute resolution. Decisions in arbitration actions already are subject to court review in certain narrow circumstances. Moreover, in most cases, participants in NFA arbitration have had a prior opportunity to seek resolution of their dispute in a reparations proceeding where they would be entitled to seek review by the Commission. In choosing to forego a reparations proceeding by selecting an arbitration proceeding, parties may make a conscious evaluation of the procedural and substantive protections they prefer. In these circumstances, it is not inappropriate to limit the right to appeal in order to preserve the resources of the parties, NFA and the Commission.

B. General Procedural Requirements

Many of the general procedural requirements included in the Commission's rules are variants of provisions in the Commission's part 9, part 10 or part 12 Rules. These include rules: (i) Establishing the requirements for an acceptable method for filing and serving relevant appeal documents (rules 171.8, 171.9); (ii) designating the Commission's business address for filing purposes (rule 171.3); (iii) explaining the computation of time periods under the rules and how to request extensions of such periods (rules 171.4, 171.5); (iv) permitting the filing of motions and settlements (rules 171.10, 171.12); (v) establishing the criteria for practice before the Commission in proceedings under the rules (rule 171.13); and (vi) describing the Commission's authority to sanction those who fail to follow the rules and to waive the rules in the interest of justice (rules 171.11, 171.14). Definitions of many of the terms used in the rules are provided in rule 171.2.

Parties should note that, in general, documents are considered filed and served on the date they are mailed rather than the date they are received. Because delays in the mail are common, the Commission's rule increases a party's time to respond by five days when the document the party is responding to is served by mail. *See* rule 171.9(b).

C. Commencement of an Appeal Procedure: NFA's Notice

Section 17(h)(1) of the Act authorizes the Commission to prescribe the type of notice NFA must provide to parties in disciplinary and membership denial actions.[13] The Commission has exercised this authority by enacting rules 171.21 and 171.42. The latter rule applies solely to final decisions in member responsibility actions while the former applies to final decisions in all other disciplinary actions as well as final decisions in membership denial and registration actions. Under rule 171.21, there are requirements that are common to the three types of actions covered by the rule, and those that differ according to the particular type of NFA action at issue. All notices under either Rule include a statement acknowledging a party's right (1) to appeal NFA's decision to the Commission and (2) to seek a stay of the decision's effective date. All notices also include information central to the timely exercise of a party's statutory right to seek review or a stay—the date of service of the notice (the beginning of the thirty day appeal period) and the effective date of NFA's decision.

The portion of the notice that varies with the type of action relates to both the standards applicable in that particular type of action under NFA's rules and NFA's substantive explanation for the particular result reached in the case. These standards are intended to allow NFA to fulfill the notice requirements of rules 171.21 and 171.42 by providing the parties with a copy of its written decision. By addressing the minimal standards set forth in these rules in its written decisions, NFA will both provide parties with the type of meaningful notice contemplated by section 17(h)(1) of the Act and supply the Commission with the type of explanation of its reasoning necessary to the effective implementation of the Commission's deferential approach to review.

Fulfillment of the notice requirement is a condition for the effectiveness of NFA's decision in a disciplinary, membership denial or registration action. Under proposed rule 171.21(7), any party to the NFA action may request that NFA's notice be stricken if it is defective in any material respect. The Commission also may take such action on its own motion. When a notice is struck, NFA's decision will not be effective until a proper notice is served. In light of the unique importance of the effective date to the successful implementation of a member responsibility action, however, the Commission does not believe it is appropriate to like the effective date of such decisions to the notice requirement of rule 171.42.

D. Procedure for Obtaining Review

The time for filing a notice of appeal commences when an effective notice has been served by NFA. Under rules 171.44 (for member responsibility actions) and 171.23 (all other actions), a notice of appeal need only include the basic information necessary to identify the party filing the appeal and the NFA decision that is the subject of the appeal. A filing fee of $100 must be included. Within 30 days of the mailing of a notice of appeal, NFA will file two copies of the record of the decision with the Commission's Proceedings Clerk (rule 171.24). At that time, NFA will serve the appealing party with a copy of the index of the record it submitted to the Commission as well as a copy of any document included in that record that was not previously served on that party. If the appealing party has any objections to the content of the record, he may raise his objections at the time he files his appeal brief.[14]

Under rule 171.25, the appealing party must submit an appeal brief within 30 days of the date NFA mailed the record of its decision. If no brief is submitted within the thirty day period, the Commission may dismiss the appeal as unperfected. NFA may file an answering brief within 30 days of the date the appealing party files his brief (rule 171.26). Either party may request the Commission to hear oral argument by filing a request at the time its brief is submitted (rule 171.32).

[12] Cf. *Wallace Conrad* v. *Chicago Board of Trade*, CFTC Docket No. 88-E-5 (CFTC) March 22, 1990), personnel decision may not in all cases be actions solely involving an exchange's internal affairs which properly are excluded from Commission review.

[13] The Commission has similar authority under section 17(o)(1) relating to NFA determinations in registration actions.

[14] Once a notice of appeal has been filed pursuant to rule 171.44, the procedures applied in an appeal from a decision in a member responsibility action are the same as those that apply to appeals in other types of actions (rule 171.45).

As a general rule, once a case is fully briefed, it will be decided by the Commission. In those cases in which the Commission believes that the result reached in NFA's decision is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may issue an order of summary affirmance as described in rule 171.33(b). In appropriate cases, however, the Commission may affirm NFA's decision by Opinion and Order. The Commission may also set aside or modify NFA's decision, or remand for further proceedings (rule 171.32).

III. Participation by Individuals That Are Not Parties to the Proceeding

A. Participation by Interested Persons Outside the Commission

In rare instances, decisions made by NFA in disciplinary, membership denial, registration and member responsibility actions will involve broad legal and policy issues that have significance for the futures industry in general. If these issues are raised on appeal to the Commission, they may take on an added significance. In such a situation, individuals or organizations outside the Commission may have an interest in presenting to the Commission their views concerning the proper resolution of the issues raised in the appeal. The Commission has adopted rule 171.27 to govern participation in proceedings subject to these rules by interested persons outside the Commission. Under this rule, such persons may file a motion that establishes their direct and substantial interest in the outcome of the proceeding. In order to avoid delay in the resolution of the proceeding, the motion must be filed promptly. In response to NFA's comments, the Commission has determined to include in § 171.27 the definition of the term "interested person" provided in its rule of practice, 17 CFR 10.10(a)(3).

B. Participation by Interested Persons on the Commission Staff

As a general matter, members of the Commission staff are free to advise the Commission on legal and policy matters that may affect their regulatory responsibilities. The Commission is also generally free to consult with any member of the Commission staff who has experience or expertise in a matter being considered by the Commission. In the context of its adjudicatory programs, however, applicable statutory provisions and principles of fundamental fairness sometimes require that the Commission limit the scope of its contact with certain members of its staff.[15] As discussed *infra*, the Commission is adopting rule 171.6 to assure that its decisionmaking process not only operates in a fair, balanced and impartial manner, but also avoids any undue appearance of bias or improper influence. Rules 171.28 and 171.31 are designed to provide an additional method consistent with principles of fundamental fairness for members of the Commission staff to communicate with the Commission concerning the merits of an appeal subject to these rules.

Rule 171.28 grants members of the Commission staff a right to make a written submission of their views concerning the appropriate result in an appeal from a decision of NFA subject to these rules. Members of the Commission staff may indicate their intention to participate in an appellate procedure under these rules by filing a notice of appearance on or before the twentieth day following the date of service of NFA's responsive brief. The Commission will generally issue an order after such a notice of appearance is received granting the staff a reasonable period of time to submit a brief and the party with the position opposed to the staff a reasonable period to reply to the staff's arguments. In those rare circumstances when the record establishes that the public interest will not be served by staff participation, the Commission will issue an order prohibiting it. The Commission will not consider, however, submissions from parties to the proceeding that staff participation be denied.

Because members of the Commission staff are not parties to proceedings brought by NFA, they are not in a position to appeal directly a determination by NFA that they believe contravenes fundamental fairness, the purposes of the Act or NFA's own rules. Because of the parallel nature of some of the responsibilities of NFA's staff and the Commission staff, a decision by NFA applying the Act or Commission regulations, or even one interpreting requirements of NFA Rules that correspond to Commission regulations, may raise significant concerns about the effect of that decision on Commission programs administered by the staff. In these circumstances, operating Divisions should have an opportunity to make these concerns known to the Commission by requesting the Commission to consider the issue despite the absence of an appeal.

Rule 171.31(a) permits members of the Commission Divisions to request that the Commission institute review of a decision by NFA in a disciplinary, membership denial or registration action by filing and serving a memorandum regarding its requests prior to the effective date of NFA's decision. The filing of such a memorandum shall automatically stay the effective date of NFA's decision for twenty days. Within fifteen days of the service of the staff's memorandum, NFA may file a response to the staff's request that review be instituted. Pursuant to rule 171.31(c), the Commission may extend the stay of the effective date of NFA's decision for an additional thirty days while it considers the submission of the staff and NFA. If the Commission decides to grant the request that review be instituted, it will issue an order to establish a procedure for submission of the record and argument by the parties. The effective date of NFA's decision would remain stayed pending the issuance of a decision on the merits by the Commission.[16]

IV. Rules Limiting Contacts With Decisional Officials and Prohibiting Non-Public Participation of Members of the Commission Staff When Such Participation Creates an Appearance of Improper Influence

Principles of fundamental fairness applicable to administrative adjudications require that the appearance of fairness and the absence of a probability of outside influences on the adjudicator be maintained. Under the Administrative Procedure Act ("APA"), such concerns about the appearance of fairness and the absence of outside influences generally are addressed by rules prohibiting *ex parte* contacts between Commission decisionmaking officials[17] and persons outside the agency interested in the results of the decision and by maintaining a separation between those agency employees who are or have been engaged in an investigative or prosecuting function related to the

[15] *Amos Treat & Co.* v. *Securities and Exchange Commission*, 306 F.2d 260 (D.C. Cir. 1962). More recently, the Court of Appeals for the Sixth Circuit described the requirements of fundamental fairness in an administrative adjudicatory setting as follows: This concept requires the appearance of fairness and the absence of any probability of outside influences in the adjudicator; it does not require proof of actual partiality. *Utica Packing Co.* v. *Block*, 781 F.2d 71, 77 (6th Cir. 1986).

[16] Pursuant to rule 171.31(d), the Commission has also retained authority to initiate review of a decision by NFA on its own motion.

[17] As a general matter, the decisionmaking officials for Commission adjudicatory appeals include Commissioners, members of the Commissioners' personal staffs and attorneys in the Office of General Counsel who work on particular opinions matters.

proceeding and those agency employees who give advice to Commissioners and the members of their staff concerning the merits of a decision.

Rule 171.6 restricts the contacts Commission decisionmaking officials may have with (1) NFA, (2) NFA members that are opposing NFA in its action and (3) any other person outside the Commission who has an interest in NFA's action. If a Commission decisional official is aware that a notice of appeal has been filed in accordance with § 171.23 or § 171.44 of these rules, or that a petition for stay or for an emergency effective date has been filed in accordance with § 171.22, § 171.41 or § 171.43 of these rules, he may not communicate with any of the individuals included in the three categories listed above about the merits of NFA's action unless the communication is preceded by reasonable notice to all parties to the action and is made on the public record.

In its comments NFA expressed its concern that limiting its communication with CFTC staff at all stages of an NFA action may unduly restrict the transmission of new regulatory information which may be relevant to the merits of the proceeding, frustrating both the Commission's and NFA's regulatory mandates. NFA urged that rule 171.6 be adopted as proposed to prohibit *ex parte* communications upon the filing of an appeal with the Commission rather than from the time an NFA action is commenced. After careful consideration, the Commission has determined to adopt § 171.6 is the prevention of *ex parte* communication. Information relevant to the merits of the proceeding may be communicated on the record upon written notice to the parties.

A decisionmaking official who violates this prohibition may be subject to sanction under rule 171.6(c)(2). A party who knowingly makes an *ex parte* contact with a Commission decisionmaking official also may be subject to sanction under the rule.

V. Delegation of Authority

In the Commission's experience delegation of authority is a practical necessity in light of the rapid growth in the Commission's appellate jurisdiction. Personal involvement by members of the Commission in the many decisions that must be made in the various cases pending on its appellate docket is possible, but only at a significant cost in both time and resources. The Commission's experience with the exercise of the delegations of authority made in the part 10 and part 12 rules [18] have convinced it that significant authority may be safely delegated as long as parties are free to challenge the staff's decisions in a timely manner. For this reason, the Commission has adopted rule 171.50, delegating authority to the Deputy General Counsel for Opinions to rule on certain limited matters. Decisions made pursuant to delegation are subject to reconsideration by the Commission if a motion is filed within seven days of the service of the ruling. The delegee may refer any matter to the Commission for its determination in the first instance and the Commission also may instruct the delegee to submit a matter for its consideration.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring of any collection of information as defined by that Act. In compliance with those requirements, the Commission previously submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget on June 13, 1990. The Office of Management and Budget approved the collection of information associated with this rule on September 10, 1990 and assigned OMB control number 3038–0043 to the rule. The burden associated with this entire collection, including this final rule, is as follows:

Average burden hours per response: 1.6
Number of respondents: 105
Frequency of response: 1–150

Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, Room 3220, NEOB, Washington, DC 20503, (202) 395–7430.

Public reporting burden for this collection of information is estimated to average 1.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project 3038, Washington, DC 20503.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies that propose rules to consider the impact those rules will have on small businesses. With respect to persons seeking Commission review of NFA adjudicatory decisions, the final regulation would impose no additional regulatory burden. Commission review of NFA disciplinary and membership denial actions are presently carried out by the Commission pursuant to generally comparable procedures adopted on a case-by-case basis. Commission review of NFA registration actions is presently governed by comparable procedures under the provisions of subpart F of part 3. The final revisions would, in fact, ease the regulatory burden to some extent by providing greater certainty and predictability concerning the standards and procedures governing such review.

Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chariman of the Commission hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

C. Effective Date

These rules will apply in their entirety to all appeals and matters relating thereto filed on or after October 31, 1990.

List of Subjects in 17 CFR Part 171

Administrative practice and procedure, Commodity exchanges, Commodity futures.

PART 3—[AMENDED]

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a), 8a, 17(h), 17(i) and 17(o) thereof, 7 U.S.C. 4a, 12a, 21(h), 21(i) and 21(o), the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

§§ 3.75, 3.80–3.91 [Removed]

1. 17 CFR part 3 Subpart E (§ 3.75) and Subpart F (§§ 3.80 to 3.91 inclusive) are removed.

2. 17 CFR part 171, is added to read as follows:

[18] There is a similar delegation of authority included in the recently amended part 9 rules. Because of the limited number of cases filed under these rules, the Commission's experience with this delegation has been limited.

PART 171—RULES RELATING TO REVIEW OF NATIONAL FUTURES ASSOCIATION DECISIONS IN DISCIPLINARY, MEMBERSHIP DENIAL, REGISTRATION AND MEMBER RESPONSIBILITY ACTIONS

Subpart A—General Provisions

Subpart B—Notice and Effective Date of Final Decisions in Disciplinary, Membership Denial and Registration Actions

Subpart C—Commission Review of Final Decisions in Disciplinary, Membership Denial and Registration Actions

Subpart D—Commission Review of Decisions by the National Futures Association in Member Responsibility Actions

Subpart E—Delegation of Functions

Authority: 7 U.S.C. 4a, 12a and 21.

Subpart A—General Provisions

§ 171.1 Scope of rules.

(a) *Matters included.* Unless specifically excluded by subsection (b), this part governs review by the Commission, pursuant to sections 17(h), (i) and (o) of the Commodity Exchange Act ("Act"), as amended, of any disciplinary action, membership denial action, registration action or member responsibility action taken by the National Futures Association or any registered futures association. Unless specifically indicated, references in this part to the National Futures Association shall also include any other registered futures association.

(b) *Matters excluded.* The Commission will not review under these rules the following decisions by the National Futures Association:

(1) A decision in a disciplinary action if the party aggrieved by the decision knowingly failed to pursue the right to appeal an adverse decision to the Appeals Committee of the National Futures Association and there are no extraordinary circumstances that otherwise warrant Commission consideration of the aggrieved party's appeal;

(2) A decision in an arbitration action brought pursuant to section 17(b)(10) of the Act or any rule of the National Futures Association;

(3) Suspension of a member based solely on that member's failure to pay National Futures Association dues;

(4) A decision to disqualify any member for service on the National Futures Association Board of Directors, Business Conduct Committees or arbitration panels pursuant to the standards for service adopted by the National Futures Association to implement Commission rule 1.63.

(c) *Appeals from excluded decisions.* If the Deputy General Counsel for Opinions or his delegee determines that a notice of appeal submitted to the Commission is from a decision that is excluded from review under this part, he may strike it and order it returned to the aggrieved party who submitted it.

(d) *Applicability of these part 171 rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals and matters relating thereto filed on or after October 31, 1990. Any part 171 proceeding commenced prior to October 31, 1990 continues to be governed by the procedures established in former subpart F of part 3 of the Commission's regulations, if applicable, or by the procedures established for that proceeding by Commission order. Parties to any proceeding pending on October 31, 1990 may, within 30 days after October 31, 1990 by written stipulation executed by all parties, and filed with the Proceedings Clerk before the Commission's final decision is rendered, elect to have the matter governed by the provisions of these part 171 rules.

§ 171.2 Definitions.

For purposes of this part:

(a) *Commission decisional employee* includes any member of the Commission staff who participates in, or may be reasonably expected to participate in, the decisionmaking process in any proceeding under this part. It does not include Commissioners or members of their personal staff.

(b) *Disciplinary action* includes any proceeding brought by the National Futures Association to enforce its rules that may result in expulsion, suspension, censure, bar from association with a member, fine in excess of $100 or any comparable sanction being imposed on a member or a person associated with a member.

(c) *Ex parte communication* shall include any communication, whether written or oral, which is both (1) not preceded by reasonable notice to all parties to a proceeding, and (2) not made on the public record. It shall not include requests made to the Commission's Opinions Section or Office of Proceedings for status reports or for an interpretation of these rules.

(d) *Final Decision* means the decision that terminates the proceeding before the National Futures Association on the action that is the subject of the notice of appeal filed with the Commission.

(e) To *mail* means to place in the United States mail (or to deliver to an overnight delivery service of established reliability) a properly addressed and post-paid document. Unless otherwise provided, documents filed and served by mail must be sent by no less expeditious means than first class United States mail.

(f) *Member* includes any person admitted to membership by the National Futures Association.

(g) *Member Responsibility Action* includes any action in which, based on a finding by the National Futures Association that there is reason to believe that summary action is necessary to protect the commodity futures markets, customers or other members of the association, a member or person associated with a member may be summarily suspended from membership or association with a member, required to restrict operations or otherwise directed to take remedial action.

(h) *Membership denial action* includes any proceeding brought by the National Futures Association to (1) determine whether an applicant should be admitted to membership or be permitted to be associated with a member, (2) determine whether an applicant should be admitted to membership or be permitted to be associated with a member on a conditional basis, or (3) determine whether to revoke or restrict the membership or association status of any person who is a member or is associated with a member.

(i) *Party* includes any person who has been the subject of a disciplinary action, membership denial action, or registration action by the National Futures Association; the National Futures Association itself; any person granted permission to participate as a party pursuant to § 171.27 of these rules; and any Division of the Commission that files a Notice of Appearance pursuant to § 171.28 of these rules.

(j) *Person associated with a member* includes any person permitted to register as an associate of a member by the National Futures Association.

(k) *Record of the proceeding* shall include the order appealed from, the findings or report on which the order is based, the pleadings, evidence and proceedings before the National Futures Association decisonmaker and a copy of any rule of the National Futures Association that is material to the order.

(l) *Registration action* includes any proceeding brought by the National Futures Association, pursuant to authority delegated by the Commission, to grant, condition, deny, suspend, restrict, or revoke the registration of any person.

(m) *Rule of the National Futures Association* includes any article of incorporation, bylaw, rule, regulation, resolution or written interpretation of stated policy of the National Futures Association.

§ 171.3 Business address; hours.

The principal office of the Commission is located at 2033 K Street NW., Washington, DC 20581. It is open each day, except Saturdays, Sundays, and legal public holidays, from 8:15 a.m. until 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC.

§ 171.4 Computation of time.

(a) *In general.* In computing any period of time prescribed by these rules or allowed by the Commission, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday. In the latter circumstances, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the period of time prescribed or allowed is less than seven (7) days.

(b) *Date of service of orders.* In computing any period of time involving the date of service of an order, the date of service shall be the date the order is mailed or hand delivered by the Proceedings Clerk, which, unless otherwise indicated, shall be the date stamped on the order by the Proceedings Clerk.

§ 171.5 Extension of time.

(a) *In general.* Except as otherwise provided by these rules, for good cause shown, on its own motion or the motion of a party, the Commission may at any time extend or shorten the time prescribed by the rules for filing any document. In any instance in which a specific time period is not prescribed in this part for an action to be taken concerning any matter, the Commission may establish a time for that action.

(b) *Filing of motion.* Absent extraordinary circumstances, when the time period that has been prescribed for an action to be taken concerning any matter exceeds seven days, requests for extension of that time period shall be filed at least five days prior to the expiration of the time period provided and shall include an explanation of the facts and circumstances that justify the extension.

§ 171.6 Ex parte communications.

(a) *Prohibition of ex parte communications.* (1) No party to a proceeding before the Commission under these rules and no person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding shall make or knowingly cause to be made an *ex parte* communication relevant to the merits of the proceeding subject to these rules to a Commissioner, member of the personal staff of a Commissioner or Commission decisional employee.

(2) No Commissioner, member of the personal staff of a Commissioner or Commission decisional employee shall make or knowingly cause to be made to a party to a proceeding subject to these rules or to any person outside the Commission who has a direct or indirect interest (pecuniary or otherwise) in the outcome of the proceeding or might be aggrieved by the outcome of the proceeding, an *ex parte* communication relevant to the merits of the proceeding subject to these rules.

(b) *Procedure for handling.* Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who receives, or who makes or knowingly causes to be made, an *ex parte* communication prohibited by paragraph (a) of this section shall:

(1) Place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(2) Promptly give written notice of such communications and responses thereto to all parties to the proceedings to which the communication or responses relate.

(c) *Sanctions.* (1) Upon receipt of an *ex parte* communication knowingly made or knowingly caused to be made by a party in violation of the prohibition contained in paragraph (a)(1) of this section, the Commission may, to the extent consistent with the interests of justice and the policies of the Act, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) Any Commissioner, member of a Commissioner's personal staff or Commission decisional employee who knowingly makes or knowingly causes to be made, or who knowingly solicits or knowingly causes the solicitation of, an *ex parte* communication which violates the prohibitions contained in paragraph (a)(2) of this section may be deemed to have engaged in conduct of the type proscribed by 17 CFR 140.735–3(b)(3).

(d) *Applicability of prohibitions and sanctions against ex parte communications.* (1)(i) The prohibitions of this section shall begin to apply at the time that a copy of a notice of appeal has been filed with the Proceedings Clerk in accordance with § 171.23 or § 171.44 of this part; or a petition for stay or for an emergency effective date has been filed in accordance with § 171.22, § 171.41 or § 171.43 of this part. The prohibitions of this section shall remain in effect until a final order has been entered in the proceeding which is no longer subject to review by the Commission or to review by any court.

(ii) The Commission may, by specific order entered in a particular proceeding, determine that these prohibitions shall commence from some date prior, or shall continue until a date subsequent, to the

times specified in paragraph (d)(1)(i) of this section.

(2) The sanctions in paragraph (c)(1) of this section shall not apply to a person making a prohibited communication (or causing it to be made) absent evidence that the person acted with actual or constructive knowledge that the person receiving the communication was a Commissioner, member of the personal staff of a Commissioner or a Commission decisional employee.

§ 171.1 [Reserved]

§ 171.8 Filing with the Proceedings Clerk.

(a) *How to file.* Any document that is required by this part to be filed with the Proceedings Clerk shall be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2000 L Street NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing.

(b) *Proof of filing.* Proof of filing shall be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified for practice before the Commission. The proof of filing shall certify that the attached document was delivered by hand to the Proceedings Clerk or deposited in the United States mail, with first-class postage prepaid (or delivered to an overnight delivery service of established reliability), addressed to the Proceedings Clerk, Office of Proceedings, 2000 L Street NW., Washington, DC 20581, on the date specified in the affidavit.

(c) *Formalities of filing*—(1) *Number of copies.* Unless otherwise provided, any person filing a document with the Proceedings Clerk shall provide two conformed copies in addition to the original.

(2) *Title page.* All documents filed with the Proceedings Clerk shall include, at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type.* All documents filed with the Proceedings Clerk shall be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature*—(i) *By whom.* All documents filed with the Proceedings Clerk shall be signed personally in ink:

(A) By the person or persons on whose behalf they are tendered for filing;

(B) By a general partner, officer or director of a partnership, corporation, association, or other legal entity; or

(C) By an attorney-at-law having authority with respect thereto. The Proceedings Clerk may require appropriate evidence of the authority of a person subscribing a document on behalf of another person.

(ii) *Effect.* The signature on any document of any person acting either for himself or as attorney or agent for another constitutes certification by him that:

(A) He has read the document subscribed and knows the contents thereof;

(B) If executed in any representative capacity, it was done with full power and authority to do so;

(C) To the best of his knowledge, information, and belief, every statement contained in the document is true and not misleading; and

(D) The document is not being interposed for delay.

§ 171.9 Service.

(a) *General requirements.* Unless otherwise provided, all documents filed with the Proceedings Clerk must be served upon all parties on the same day.

(b) *Manner of service.* Service may be made by personal delivery (effective upon receipt) or by mail (effective upon deposit). When service is effected by mail, the time within which the person served may respond thereto shall be increased by five days.

(c) *Proof of service.* Proof of service shall be made by filing with the Proceedings Clerk, at the same time as the relevant document is filed, an affidavit of service executed by a person 18 years of age or older or a certificate of service executed by an attorney qualified to practice before the Commission. The proof of service shall state that service has been made and identify the person served, the date of service and the manner of service.

(d) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party must state on the first page the name, postal address and telephone number of the person authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents shall be made upon the person authorized unless service on a different authorized person or on the party himself is authorized by the Commission, or unless pursuant to § 171.8 the person authorized is changed by the party upon due notice to all other parties. Parties shall file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(e) *Service of orders and decisions.* A copy of all notices, rulings, opinions and orders of the Commission shall be served on each of the parties by the Proceedings Clerk. Service will be deemed complete upon deposit in the mail.

§ 171.10 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part shall be made by a written motion, filed with the Proceedings Clerk. The motion shall state the relief sought, basis for the relief and the authority relied upon.

(b) *Answers to motions.* Unless otherwise provided, a party may file a written response to a motion within five days after service of the motion.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter shall not be permitted.

§ 171.11 Sanctions.

In the event a party fails to fulfill his obligations under these Rules, the Commission may impose appropriate sanctions including dismissal of the appeal or summary reversal of the decision under appeal. Sanctions may be imposed on the motion of a party or on the Commission's own motion.

§ 171.12 Settlement.

At any time before the Commission has reached a final determination in a proceeding, the parties may request dismissal of the appeal based on a settlement agreement. If, in its view, the settlement is consistent with the public interest, the Commission will dismiss the proceeding.

§ 171.13 Practice before the Commission.

(a) *Practice.*—(1) *By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with the provisions of part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in a proceeding subject to these rules. The Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal from representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw may be subject to conditions including submission of an affidavit averring that the party represented has actual knowledge of the withdrawal and providing the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se.* If the party proceeds *pro se,* the statement shall include the address where the party can thereafter be served.

§ 171.14 Waiver of rules.

To prevent undue hardship on any party or for other good cause shown, the Commission may waive any rule in this part in a particular case and may order proceedings in accordance with its direction. Such an order shall be based upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

Subpart B—Notice and Effective Date of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.20 [Reserved]

§ 171.21 Notice of final decision.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceedings Clerk and the Secretary of the Commission, with a written notice of any final decision in a disciplinary action, membership denial action or registration action subject to these rules. The notice may be contained in the written decision issued by the National Futures Association.

(b) *Content of the notice.* At a minimum, the notice shall provide the following information:

(1) The names of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.28 as well as their right to seek a stay of the effective date of the decision pursuant to § 171.27.

(4) For a disciplinary action:

(i) A statement setting forth the relevant acts of practices engaged in or omitted by the parties to the proceeding;

(ii) A statement setting forth the specific rule or rules of the association violated by the relevant acts or practices or omissions to act of the parties to the proceeding;

(iii) A statement setting forth the penalty imposed and the basis for its imposition.

(5) For a membership action:

(i) The specific grounds for the denial, bar, expulsion, or restriction;

(ii) The findings made concerning those grounds;

(iii) An explanation of the result reached in light of the grounds for ineligibility found and the findings made.

(6) For a registration action:

(i) The statutory disqualification at issue;

(ii) The findings made concerning the statutory disqualification;

(iii) An explanation of the result reached in light of the statutory disqualification shown and the findings made.

(c) *Effect of inadequate notice.* (1) If the National Futures Association issues a notice of a final decision subject to these rules that is not substantially consistent with the requirements of this section, and the record does not establish that the errors therein are harmless, the notice may be stricken. The Commission may act on its own motion or on the motion of a party.

(2) When a notice is struck, the final decision of the National Futures Association shall not be effective until a proper notice is served.

§ 171.22 Effective date of final decisions in disciplinary, membership denial and registration actions.

(a) *General rule.* A final decision of the National Futures Association in a disciplinary action, membership denial action or registration action shall be effective thirty days after service of the notice described in § 171.21.

(b) *Petitions for stay pending review or for an emergency effective date.*—(1) *Stay pending review.* Within ten days of service of the notice described in § 171.21, any aggrieved party may seek from the Commission a stay pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay. If the Commission does not grant the petition prior to the effective date of the decision under review, it shall be deemed denied. All petitions for stay must be accompanied by a notice of appeal.

(2) *Emergency effective date.* Within ten days of service of the notice described in § 171.21, the National Futures Association may seek from the Commission an order establishing an emergency effective date for the decision by filing and serving an appropriate petition. The mere filing of such a petition shall not alter the effective date of the decision. The burden of persuasion rests with the National Futures Association. If the Commission does not grant the petition by the date specified as the emergency effective date, it shall be deemed denied.

(3) *Contents of petition for stay and petition for an emergency effective date.* A petition for stay or for an emergency effective date shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(4) *Response.* Within five days of the service of the petition, a party may file in opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Standards for determining petitions for a stay or an emergency effective date petition.* In reviewing petitions filed under this seciton, the Comission shall consider:

(1) The likelihood that a challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the opposing party; and

(4) The effect a grant or denial of the petition would have on the public interest.

(d) *Expedited consideration.* If, in its view, it is necessary to protect the petitioner's right to a meaningful determination of the issues raised in the petition, the Commission may act upon a petition for a stay or for an emergency effective date prior to its receipt of an opposing party's response. Any party aggrieved by such expedited consideration may seek reconsideration within seven days of service of the decision.

§ 171.23 Notice of appeal.

(a) *Time to file.* Any party aggrieved by the final decision of the National Futures Association in a disciplinary, membership denial or registration action may, within thirty days of the National Futures Association's service of the notice described in § 171.21, file a notice of appeal with the Proceedings Clerk. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall consist of a brief statement indicating that the party is requesting Commission review of an action of the National Futures Association. It should identify:

(1) The name and address of the person appealing and, if represented, the name and address of his representative;

(2) The case name and docket number of the National Futures Association proceeding; and

(3) The date of the decision.

(c) *Filing fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of $100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.24 Submission of the record.

Within thirty days after service of a notice of appeal, the National Futures Association shall file with the Proceedings Clerk two copies of the record of the proceeding (as defined by § 171.2(k)). The record shall be bound as a unit, chronologically indexed and tabbed, and certified as correct by a duly authorized official, agent or employee of the National Futures Asssociation. The National Futures Association shall serve on the party appealing, in lieu of the record, a copy of the index of the record and a copy of any document in the record not previously served on the party appealing. If the party appealing objects to the materials included or excluded in preparing the record, he shall file his objections with his brief on appeal. The Commission may, at any time, direct that an omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

§ 171.25 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 171.23, shall perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record by the National Futures Association. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section shall include, in the order indicated:

(1) A statement of the issues presented for review;

(2) A statement of the case. The statement shall indicate briefly the nature of the case and include a full description of the action being challenged. There shall follow a clear and concise statement of all facts relevant to the consideration of the appeal with appropriate citations to the record;

(3) An argument. The argument shall contain the contentions of the appellant with respect to the issues presented and the reasons supporting those contentions. It shall cite specifically to the relevant authorities and to those parts of the record that support appellant's contentions; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the appeal brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, rules, regulations or similar materials.

§ 171.26 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the apeal brief, the National Futures Association shall file with the Proceedings Clerk an answering brief.

(b) *Contents of answering brief.* The contents of the answering brief generally shall be consistent with those set forth in § 171.25(b) but may omit a statement of the issues and a statement of the case if the National Futures Association does not dispute the issues or the statement of the case contained in the appeal brief.

(c) *Length of the answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 171.27 Limited participation by interested persons.

(a) Upon motion of any interested person or, on its own motion, the Commission may permit, or solicit, limited participation in the proceeding by such interested person. A motion for leave to participate in the proceeding shall be filed promptly, shall identify the interest of that person and shall show why participation in the proceeding by that person would serve the public interest. If the Commission determines that participation would serve the public interest, it shall by order establish a supplementary briefing schedule for the interested person and the parties to the proceeding.

(b) For purposes of this subsection, *interested person* shall include parties and any other persons who might be adversely affected or aggrieved by the outcome of a proceeding; their officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives; and any other person having a direct or indirect pecuniary or other interest in the outcome of a proceeding.

§ 171.28 Participation by Commission staff.

The Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may participate in any proceeding by filing a notice of appearance. Such a notice shall be filed and served on or before the twentieth day following the date of service of its brief by the National Futures Association. The Commission shall by order establish a supplementary briefing schedule for the Commission staff and other parties to the proceeding. If it concludes that participation of the Commission staff will not serve the public interest, the Commission shall prohibit further participation.

Subpart C—Commission Review of Final Decisions in Disciplinary, Membership Denial and Registration Actions

§ 171.30 Scope of review.

On review, the Commission may, in its discretion and after appropriate consideration of the notice given to the parties, consider *sua sponte* any issues arising from the record before it and

may base its determination thereon. The Commission may also limit its consideration to those issues specifically raised in the parties' briefs, treating all other issues as waived.

§ 171.31 Commission review in the absence of an appeal.

(a) *Request by Commission staff.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Division of Enforcement, the Division of Trading and Markets or the Division of Economic Analysis may file and serve a memorandum requesting the Commission to institute review of the National Futures Association proceeding. The filing of such a memorandum shall stay the effective date of the decision at issue for twenty days.

(b) *Response by the National Futures Association.* The National Futures Association may file a response to the memorandum of the Commission staff within fifteen days of the service of the memorandum.

(c) *Commission determination of staff request.* To preserve the status quo while it determines whether review is apropriate, the Commission may extend the stay of the effective date of the decision at issue for an additional 30 days. If the Commission decides to take review, the effective date of the decision at issue shall be stayed pending the decision of the Commission, unless otherwise ordered. The Commission shall by order establish the procedure for submission of both the record of the proceeding and the briefs of the parties to the proceeding.

(d) *Commission review on its own motion.* At any time prior to the effective date of a final decision of the National Futures Association in a disciplinary, membership denial or registration action, the Commission may take review of a decision by issuing an appropriate order. If the Commission determines that it is appropriate to take review on its own motion, it shall by order establish the procedure for submission of both the record of the proceeding and the briefs of the parties.

§ 171.32 Oral argument.

(a) *On motion of Commission.* On its own motion, the Commission may, in its discretion, hear oral argument in a proceeding.

(b) *On request of party.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. A request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103(b) of this chapter.

§ 171.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the National Futures Association. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the registered futures association proceeding, briefs submitted to the Commission by the parties and any oral argument made in accordance with § 171.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the decision of the National Futures Association shall be affirmed without a Commission opinion.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the National Futures Association is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision without opinion. The decision of the National Futures Association shall constitute the Commission's final decision, effective upon service. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a Commission determination to adopt the rationale of the National Futures Association, and neither the order of summary affirmance nor the underlying order shall serve as Commission precedent in other proceedings.

§ 171.34 Standards of review.

(a) *Disciplinary actions.* In reviewing a final decision of the National Futures Association in a disciplinary action, the Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings of the National Futures Association concerning the relevant acts or practices engaged in or omitted;

(4) The determination that the acts or practices engaged in or omitted violated rules of the National Futures Association does not rest on a reasonable interpretation of the rules at issue;

(5) The National Futures Association's application of its rules is not consistent with the purposes of the Act;

(6) The National Futures Association's choice of sanction is excessive or oppressive in light of the violations found having due regard for the public interest.

(b) *Membership denial actions.* In reviewing a final decision of the National Futures Association in a membership denial action, the Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

(c) *Registration actions.* In reviewing a decision of the National Futures Association in a registration action, the Commission shall affirm the order of the National Futures Association unless the Commission finds that:

(1) The proceedings were not conducted in a manner consistent with fundamental fairness;

(2) The proceedings were not conducted in a manner consistent with the rules of the National Futures Association;

(3) The weight of the evidence does not support the findings made or adopted in the final decision;

(4) The conclusion of the National Futures Association is not consistent with the purposes of the Act.

Subpart D—Commission Review of Decisions by the National Futures Association In Member Responsibility Actions

§ 171.40 Notice of the commencement of a member responsibility action.

The notice of a Member Responsibility Action provided by the National Futures Association pursuant to its rules shall advise the affected parties of their right to petition the Commission pursuant to § 171.41 to stay the effective date of the action pending a hearing before the National Futures Association on the factual issues relevant to the suspension, restriction or remedial action ordered.

§ 171.41 Petition for a Stay of effective date of a member responsibility action pending a hearing by the National Futures Association.

(a) *Time to file.* Within ten days after the National Futures Association serves the notice required by § 171.40, any party aggrieved by the National Futures Association's determination that the member responsibility action should be effective prior to the opportunity for a hearing on the factual issues relevant to the suspension, restriction or remedial action imposed may petition the Commission to stay its effectiveness pending completion of further proceedings by the National Futures Association. The burden of persuasion shall rest with the party seeking the stay.

(b) *Content.* A petition for stay shall meet the content requirements set forth in § 171.22(b)(3).

(c) *Response.* A response may be filed by the National Futures Association in accordance with § 171.22(b)(4).

(d) *Standards for granting petition for stay.* In reviewing petitions to stay the effectiveness of the member responsibility action pending completion of further proceedings, the Commission shall consider:

(1) Whether, in the circumstances presented, the notice and opportunity for a hearing provided by the National Futures Association are consistent with principles of fundamental fairness; and

(2) The likelihood that the denial of the petition would result in irreparable harm to petitioner; and

(3) The effect a grant of the petition would have on the interests of the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) If the suspension, restriction or remedial action imposed by the National Futures Assocation in a member responsibility action is effective at the time a petition for a stay is filed with the Commission, the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the action is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

(f) *Proceedings following Commission disposition.* If the petition for a stay is denied, the National Futures Association shall continue its action in accordance with the applicable rules of the association. If the petition for a stay is granted, the action shall be remanded to the National Futures Association for further proceedings as provided in the Commission's decision. Unless otherwise ordered by the Commission, a stay issued pursuant to this section shall not deprive the National Futures Association of the authority, after conducting a hearing under the appropriate rules of the association, to make the suspension, restriction or remedial action ordered in the member responsibility action immediately effective at the time a final decision is issued.

§ 171.42 Notice of a final decision of the National Futures Association in a member responsibility action.

(a) *When required.* The National Futures Association shall promptly serve all parties, as well as the Proceeding Clerk and Secretary of the Commission, with a written notice of any final decision in a member responsibility action. The notice may be contained in the written decision issued by the National Futures Association. If the National Futures Association determines that the decision shall be effective upon issuance, in addition to serving a written notice, it shall also contact the parties and the Proceedings Clerk by telephone to inform them of its determination.

(b) *Contents of the written notice.* At a minimum, the notice shall provide the following information:

(1) The name of the parties to the proceeding;

(2) The date the notice was served and the effective date of the decision;

(3) A statement informing the parties of their right to appeal the decision to the Commission pursuant to § 171.44 as well as their right to seek a stay of the decision pending Commission consideration of their appeal pursuant to § 171.43;

(4) A description of the action taken and the reasons for the action;

(5) Findings of fact and conclusions of law on all issues relevant to its decision;

(6) A determination of the appropriate relief based on the findings and conclusions.

§ 171.43 Petition for a stay of the effective date of a final decision of the National Futures Association in a member responsibility action.

(a) *Filing the petition.* Within ten days of the service of the notice described in § 171.42, any aggrived party may seek from the Commission a stay of the effective date of the decision of the National Futures Association pending consideration of the merits of an appeal by filing and serving an appropriate petition. The mere filing of such a petition shall not stay the effective date of the decision. The burden of persuasion shall rest with the party seeking the stay.

(b) *Contents.* A petition for a stay shall be in writing. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(c) *Response.* Within five days of the service of the petition, the National Futures Association may file an opposition to the petition. Material factual allegations shall be supported by an affidavit or other sworn statement unless the parties stipulate that the material facts are not in dispute.

(d) *Standards for determining petitions for a stay.* In reviewing petitions filed under this section, the Commission shall consider:

(1) The likelihood that petitioner's challenge to the merits of the decision will be successful; and

(2) The likelihood that the denial of the petition would result in irreparable harm to the petitioner; and

(3) The effect a grant of the petition would have on the National Futures Association; and

(4) The effect a grant or denial of the petition would have on the public interest.

(e) *Expedited consideration.* If the suspension, restriction or remedial action imposed by the National Futures Association in a member responsibility action is effective at the time a petition for a stay is filed with the Commission,

the Commission shall not delay its decision on the petition to await the receipt of the National Futures Association's response. If the decision is not effective at the time the petition is filed, the Commission will not act upon the petition prior to the receipt of a response from the National Futures Association unless, in its view, expedited action on the petition is necessary to protect petitioner's right to a meaningful determination of the right to a stay. If the Commission grants the petition prior to the receipt of the response of the National Futures Association, the association may seek reconsideration of the Commission's action within seven days of service of the decision.

§ 171.44 Notice of appeal.

(a) *Time to file.* Any party aggrieved by a final decision of the National Futures Association in a member responsibility action may, within thirty days of the service of the notice described in § 171.42, file with the Proceedings Clerk and serve on the National Futures Association a notice of appeal. The filing of such a notice shall not stay the effective date of the decision.

(b) *Contents.* The notice of appeal shall meet the content requirements of § 171.23(b).

(c) *Filing fee.* Each notice of appeal must be accompanied by a nonrefundable filing fee of $100. This amount may be paid by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

(d) *Defective notices of appeal.* Notices of appeal that are untimely or not accompanied by the filing fee shall not be accepted by the Proceedings Clerk absent a showing, by motion, of excusable neglect.

§ 171.45 General procedures.

The following procedural rules applicable to review of decisions of the National Futures Association in disciplinary, membership denial and registration actions shall also apply to the review of decisions of the National Futures Association in member responsibility actions:

(a) Section 171.24 Submission of the Record.

(b) Section 171.25 Appeal Brief.

(c) Section 171.26 Answering Brief.

(d) Section 171.27 Limited Participation By Interested Persons.

(e) Section 171.28 Participation By Commission Staff.

(f) Section 171.30 Scope of Review.

(g) Section 171.31 Commission Review In the Absence of An Appeal.

(h) Section 171.32 Oral Argument.

(i) Section 171.33 Final Decision By the Commission.

§ 171.46 Standards of review.

In reviewing the decision of the National Futures Association in a member responsibility action, the Commission shall consider whether:

(a) The proceedings were conducted in a manner consistent with fundamental fairness;

(b) The proceedings were conducted in a manner consistent with the rules of the National Futures Association;

(c) The weight of the evidence supports the findings of the National Futures Association concerning the reasons for the action;

(d) The determination that summary action is necessary to protect the commodity futures markets, customers, or members of the National Futures Association rests on a reasonable interpretation of the NFA rules at issue;

(e) The National Futures Association's application of its rules is consistent with the purposes of the Act;

(f) In light of the findings of the National Futures Association concerning the reasons for the action and the public interest, the suspension, restriction or remedial action imposed by the National Futures Association is not excessive, oppressive or an abuse of discretion.

Subpart E—Delegation of Functions

§ 171.50 Delegation to the Deputy General Counsel for opinions.

(a) The Commission hereby delegates, until it orders otherwise, to the Deputy General Counsel for Opinions, or the Deputy General Counsel's designee, the authority:

(1) To waive or modify any of the requirements of §§ 171.25, 171.26, 171.27 and to waive or modify any requirement of the Part 171 Rules insofar as it pertains to changes in the time permitted for filing, or the form, execution, service and filing of documents;

(2) To enter orders under §§ 171.10, 171.12, 171.21 and 171.31(c);

(3) To decline to accept any notice of appeal, or petition for stay pending review, of matters specified in § 171.1(b) and to so notify the appellant and the registered futures association;

(4) To stay the effective date of a decision of the National Futures Association in a disciplinary, membership denial or registration action, or a decision relating to such actions issued by the Commission pursuant to these rules, for a reasonable period of time, not to exceed 10 days, when such a stay is necessary to allow the Commission to consider a petition to stay the effective date of such a decision or a motion for similar relief;

(5) To decline to accept any document which has not been filed or perfected as specified in these rules;

(6) To determine motions seeking permission to participate in a proceeding under § 171.27 and to establish the related briefing schedule;

(7) To establish briefing schedules under § 171.28; and

(8) To enter any order which, in his judgment, will facilitate or expedite Commission review of a decision by the National Futures Association in a disciplinary, membership denial or registration action.

(b) Within seven days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(c) The Deputy General Counsel for Opinions may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (a) of this section.

(d) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Deputy General Counsel for Opinions under this section.

Issued in Washington, DC, on Monday, October 1, 1990.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 90-23750 Filed 10-5-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 90-88]

Special Local Regulations: City of Miami

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the 1990 Columbus Day Cruising Regatta. The event will be held on October 6-7, 1990, from 9 a.m. EDT until 6 p.m. EDT on the sixth and from 10 a.m. EDT until 6 p.m. EDT on the seventh. October 13 and 14, 1990, from 9 a.m. EDT until 6 p.m. EDT on the

thirteenth and from 10 a.m. EDT until 6 p.m. EDT on the fourteenth, have been established as alternate dates in case of severe weather. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on October 6, 1990, at 8:30 a.m. EDT and terminate on October 7, 1990, at 6:30 p.m. EDT. In case of severe weather, these regulations will become effective on October 13, 1990, at 8:30 a.m. EDT and terminate on October 14, 1990, at 6:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: ENS A.M. Palermo, (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are LT G. G. Tanos, Project Attorney, Seventh Coast Guard District Legal Office, and ENS Andrea Palermo, Project Officer, USCG Group Miami.

Discussion of Regulations

The 1990 Columbus Day Cruising Regatta is a sailboat race taking place on Biscayne Bay in the vicinity of Dinner Key Channel to the East Featherbed Bank. The event is a two-day race involving approximately six hundred 18 to 65 foot single and multi-hull sailing vessels with an additional 500 spectator crafts expected to view the race.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been demonstrated that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07–88 is added as follows:

§ 100.35T07–88 City of Miami.

(a) *Regulated Area.* The regulated area will be all navigable waters on Biscayne Bay in the vicinity of Dinner Key Channel on the North end of the course extending to East Featherbed Band on the South end of the course.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander.

(2) All vessels in the regulated area will follow the directions of the Patrol Commander and will proceed at no more than 5 MPH when passing the regulated area.

(3) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date.* These regulations become effective on October 6, 1990, from 8:30 a.m. EDT and terminate on October 7, 1990, at 6:30 p.m. EDT. In case of severe weather, these regulations will become effective on October 13, 1990, at 8:30 a.m. EDT and terminate on October 14, 1990, at 6:30 p.m. EDT.

Dated: September 26, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90–23756 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD1 90–167]

Head of the Connecticut Regatta, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.105, for the Head of the Connecticut Regatta to be held on Sunday, October 7, 1990 from 9 a.m. to 6 p.m. The regulations in 33 CFR 100.105 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations, 33 CFR 100.105, are effective from 9 a.m. to 6 p.m. on Sunday, October 7, 1990 and will be in effect each year thereafter during the same period on the second Saturday of October or as published in a **Federal Register** notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, (617) 223–8310.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ens. L. J. Penney, project officer, First Coast Guard District Boating Safety Division, and Lt. R. E. Korroch, project attorney, First Coast Guard District Legal Division.

This notice provides the effective period for the permanent regulation governing the 1990 running of the Head of the Connecticut Regatta in Middletown, Connecticut. The regulations, 33 CFR 100.105, will be in effect from 9 a.m. on October 7, 1990 through 6 p.m. on October 7, 1990. A portion of the Connecticut River will be closed off during this time to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area off the towns of Cromwell, Portland, and Middletown, CT, between the southern tip of Gildersleeve Island and Light No. 87. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Dated: September 24, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90–23751 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 100 and 165

[CGD 90–059]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there

has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between July 1, 1990 and September 30, 1990 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Executive Secretary, Marine Safety Council at (202) 267–1477

between the hours of 8 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations, and security zones have been exempted from review under Executive Order 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1990 through September 30, 1990 unless otherwise indicated.

Docket No.	Location	Type	Effective Date
CGD1-90-118	Hudson River, NY	Safety	01 July 90.
CGD1-90-079	East River, NY	Safety	03 July 90.
CGD1-90-119	Lake Champlain, VT	Safety	03 July 90.
CGD1-90-115	Raritan Bay, NJ	Safety	04 July 90.
CGD1-90-120	Hudson River, Kingston	Safety	04 July 90.
CGD1-90-126	Colt State Park, RI	Safety	05 July 90.
CGD1-90-122	Lake Champlain, VT	Security	06 July 90.
CGD1-90-127	Greenport Firework	Safety	22 July 90.
CGD1-90-132	New York Harbor	Security	24 July 90.
CGD1-90-129	Long Island Sound	Safety	28 July 90.
CGD1-90-133	East Passage	Safety	28 July 90.
CGD1-90-138	Mount Hope Bay, RI	Safety	03 August 90.
CGD1-90-134	Connecticut River	Final Rule	04 August 90.
CGD1-90-141	Taunton River, MA	Safety	04 August 90.
CGD1-90-140	Battleship Cove	Safety	04 August 90.
CGD1-90-148	Harlem River, New York	Safety	07 August 90.
CGD1-90-146	Lower East Passage	Safety	09 August 90.
CGD1-90-147	Lower East Passage	Safety	11 August 90.
CGD1-90-150	M. Tisch Firework Display	Safety	11 August 90.
CGD1-90-145	Quonset Point, RI	Safety	18 August 90.
CGD1-90-131	Hudson River, Peekskill	Safety	18 August 90.
CGD1-90-019	Lower East Passage	Safety	25 August 90.
CGD1-90-149	Lower East Passage	Safety	25 August 90.
CGD1-90-128	East River	Safety	02 Sep 90.
CGD1-90-160	Lower Hudson River	Safety	02 Sep 90.
CGD1-90-158	Hewlett Bay Firework	Safety	03 Sep 90.
CGD1-90-159	Restoration of Bug Lighthouse Firweorks	Safety	05 Sep 90.
CGD1-90-165	New York Harbor	Security	07 Sep 90.
CGD1-90-164	Ellis Island	Security	09 Sep 90.
CGD2-90-85	Portsmouth Riverdays	Special	02 Sep 90.
CGD5-90-48	Chesapeake Bay	Security	10 July 90.
CGD5-90-53	Chesapeake Bay	Security	21 July 90.
CGD5-90-61	Chesapeake Bay	Safety	13 August 90.
CGD5-90-63	Cape Fear River	Safety	15 August 90.
CGD5-90-68	Cape Fear River	Safety	15 August 90.
CGD5-90-66	Bogue Sound	Safety	20 August 90.
CGD5-90-67	Bogue Sound	Safety	21 August 90.
CGD5-90-66	Bogue Sound	Safety	22 August 90.
CGD5-90-73	New Jersey Dragboat	Special	30 Sep 90.
CGD7-90-66	City of Charleston, SC	Special	04 July 90.
CGD7-90-67	City of Beaufort, SC	Special	14 July 90.
CGD7-90-75	City of Augusta, GA	Special	20 July 90.
CGD7-90-85	Ponce De Leon Inlet, FL	Special	26 August 90.
CGD8-90-18	Budweiser Jet Ski Classic	Special	12 August 90.
COTP Boston 90-092	Boston Harbor, MA	Safety	06 July 90.
COTP Boston 90-165	Boston Inner Harbor	Safety	06 July 90.
COTP Boston 90-093	Boston Harbor,, MA	Safety	09 July 90.
COTP Boston 90-151	Dorechester Bay	Safety	01 Sep 90.

Docket No.	Location	Type	Effective Date
COTP Boston 90-161	Boston Harbor, MA	Safety	04 Sep 90.
COTP Boston 90-162	Boston Harbor, MA	Safety	04 July 90.
COTP Charleston 90-86	Cooper River	Security	30 August 90.
COTP CorpChristi 90-04	Brownsville Ship Channel	Safety	18 August 90
COTP Detroit 90-01	Saginaw River	Safety	19 Sep 90.
COTP Huntington 90-03	Ohio River	Safety	04 July 90.
COTP Huntington 90-04	Ohio River	Safety	04 July 90.
COTP Huntington 90-05	Ohio River	Safety	04 July 90.
COTP Huntington 90-06	Kanawha River	Safety	04 July 90.
COTP Huntington 90-08	Ohio River	Safety	21 July 90.
COTP Huntington 90-09	Ohio River	Safety	28 July 90.
COTP Huntington 90-11	Elk River	Safety	25 July 90
COTP Jack'ville 90-68	St. Johns River	Safety	04 July 90.
COTP Jack'ville 90-69	St. Johns River	Safety	04 July 90.
COTP Jack'ville 90-70	Amelia River	Safety	04 July 90.
COTP Jack'ville 90-71	Intracoastal Waterway	Safety	04 July 90.
COTP Jack'ville 90-82	St. Johns River	Safety	15 August 90.
COTP Jack'ville 90-83	St. Johns River	Safety	18 August 90.
COTP Jack'ville 90-93	St. Johns River	Safety	15 Sep 90.
COTP LA/LB 90-50	Ports of LA/LB	Safety	24 July 90.
COTP LA/LB 90-06	Ports of LA/LB	Safety	28 August 90.
COTP LA/LB 90-08	Port Hueneme, CA	Safety	16 Sep 90.
COTP LA/LB 90-09	Port Long Beach, CA	Safety	19 Sep 90.
COTP Louisville 90-10	Louisville, KY	Safety	04 July 90.
COTP Louisville 90-11	Louisville, KY	Safety	25 July 90.
COTP Louisville 90-14	Louisville, KY	Safety	07 Sep 90.
COTP Louisville 90-15	Louisville, KY	Safety	08 Sep 90.
COTP Memphis 90-06	Lower Mississippi River	Safety	04 July 90.
COTP Memphis 90-07	Lower Mississippi River	Safety	09 August 90.
COTP Memphis 90-09	Lower Mississippi River	Safety	21 August 90.
COTP Memphis 90-08	Lower Mississippi River	Safety	22 August 90.
COTP Phialadephia 90-05	Cape May Harbor	Safety	25 July 90.
COTP Pittsburgh 90-06	Ohio River	Safety	03 July 90.
COTP Portland 90-121	USCGC Eagle	Safety	03 July 90.
COTP Portland 90-05	Columbia River Entrance	Safety	05 Sep 90.
COTP Puget Sound 90-07	Indian Island	Safety	05 July 90.
COTP Puget Sound 90-08	West Point in Puget Sound	Safety	31 July 90.
COTP Puget Sound 90-09	West Point in Puget Sound	Safety	01 August 90.
COTP Puget Sound 90-10	West Point in Puget Sound	Safety	06 August 90.
COTP Puget Sound 90-11	West Point in Puget Sound	Safety	07 August 90.
COTP San Diego 90-04	San Diego, CA	Safety	04 Aug 90.
COTP San Diego 90-06	San Diego, CA	Safety	12 Sep 90.
COTP Savannah 90-065	Skull Creek	Safety	04 July 90.
COTP Savannah 90-081	Savannah River	Safety	10 August 90.
COTP St. Louis 90-29	Upper Mississippi River	Safety	17 June 90.
COTP St. Louis 90-27	Upper Mississippi River	Safety	25 June 90.
COTP St. Louis 90-28	Upper Mississippi River	Safety	27 June 90.
COTP St. Louis 90-31	Upper Mississippi River	Safety	01 July 90.
COTP St. Louis 90-32	Upper Mississippi River	Safety	03 July 90.
COTP St. Louis 90-33	Illinois River	Safety	03 July 90.
COTP St. Louis 90-34	Upper Mississippi River	Safety	03 July 90.
COTP St. Louis 90-35	Upper Mississippi River	Safety	04 July 90.
COTP St. Louis 90-36	Illinois River	Safety	04 July 90.
COTP St. Louis 90-30	Upper Mississippi River	Safety	04 July 90.
COTP St. Louis 90-38	Upper Mississippi River	Safety	22 July 90.
COTP St. Louis 90-40	Upper Mississippi River	Safety	03 August 90.
COTP St. Louis 90-41	Upper Mississippi River	Safety	11 August 90.
COTP St. Louis 90-43	Illinois River	Safety	16 August 90.
COTP St. Louis 90-42	Upper Mississippi River	Safety	17 August 90.

Dated: October 1, 1990.

Bruce Novak,

Executive Secretary, Marine Safety Council.

[FR Doc. 90-23752 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Detroit Reg. 90-02]

Safety Zone Regulations; Saginaw River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Saginaw River in order to protect safety of life and property on the water during the ongoing pollution cleanup and salvage operations for the Tank Vessel Jupiter at the total Petroleum Wharf, Bay City, MI.

EFFECTIVE DATE: This regulation will be in effect from 12:00 pm October 1, 1990 to 12:00 pm October 31, 1990, unless otherwise terminated by the Captain of the Port, Detroit, MI.

FOR FURTHER INFORMATION CONTACT: Commander Thomas M. Daley, captain of the Port, Detroit, MI (313-568-9580).

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to preclude damage to vessels or injury to people in the vicinity.

Drafting Information

Thomas M. Daley, Captain of the Port, Detroit, MI. and Lieutenant M. Eric

Reeves, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the ongoing pollution cleanup and salvage operation on the T/V JUPITER at the Total Petroleum Wharf Bay City, MI. The zone is needed to insure the protection of property and workers during the operations. This follows up a Captain of the Port order restricting traffic in the area.

The regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities. This section is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165 [AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–6 and 160.5.

2. A new § 165.T0922 is added to read as follows:

§ 165.T0922 Safety Zone: Saginaw River.

(a) *Location.* The following area is a safety zone: The waters of the Saginaw River from 500 yards upstream of the Independence Bridge to 500 yards downstream of the Detroit and Macknaw Railroad Bridge.

(b) *Effective date.* This regulation is effective from 12:00 pm on October 1, 1990 to 1200 pm on October 31, 1990 unless otherwise terminated by the Captain of the Port, Detroit, MI.

(c) *Regulations.* In accordance with the general regulations in § 165.23, no person or vessel may enter into this zone unless authorized by the Captain of the Port, Detroit, MI.

Dated: September 28, 1990.

Thomas M. Daley,

Captain of the Port, Detroit, Michigan.

[FR Doc. 90–23678 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6891]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Floor Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub.L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certified that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Data certain federal assistance no longer available in special flood hazard areas
Region III—Regular Program Conversions				
Pennsylvania:				
Donegal, Township of, Westmoreland County	422187	Jan. 2, 1981, Emerg.; Oct. 16, 1990, Reg.; Oct. 16, 1990, Susp.	10-16-90	Oct. 16, 1990.
Rockland, Township of, Venango County	422113	Mar. 3, 1977, Emerg.; Oct. 16, 1990, Reg.; Oct. 16, 1990, Susp.	10-16-90	Do.
Sandycreek, Township of, Venango County	422541	June 23, 1975, Emerg.; Oct. 16, 1990, Reg.; Oct. 16, 1990, Susp.	10-16-90	Do.
Region V—Minimal Conversion				
Illinois: Dwight, Village of, Livingston County	170423	Aug. 9, 1974, Emerg.; Nov. 1, 1990, Reg.; Nov. 1, 1990, Susp.	11-1-90	Nov. 1, 1990.
Region I—Regular Program Conversions				
Massachusetts: Boston, City of, Suffolk County	250286	July 7, 1975, Emerg.; Apr. 1, 1982, Reg.; Nov. 2, 1990, Susp.	11-2-90	Nov. 2, 1990.
Maine: Cushing, Town of, Knox County	230224	May 7, 1976, Emerg.; July 16, 1990, Reg.; Nov. 2, 1990, Susp.	7-16-90	July 16, 1990.
Region II				
Pennsylvania:				
Benzinger, Township of, Elk County	421607	Apr. 9, 1976, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Nov. 2, 1990.
Chester Hill, Borough of, Clearfield County	420299	July 31, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Elkland, Township of, Tioga County	422096	June 30, 1976, Emerg.; Mar. 1, 1987, Reg.; Nov. 2, 1990, Susp.	11-2-90	Do.
Forks, Township of, Sullivan County	422062	Aug. 25, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Fox, Township of, Elk County	421608	Dec. 19, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Glenburn, Township of, Lackawanna County	421754	Mar. 10, 1976, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Greene, Township of, Franklin County	421649	June 18, 1974, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Hillsgrove, Township of, Sullivan county	422064	Dec. 8, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Virginia:				
Claremont, Town of, Surry County	510158	Dec. 26, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Surry County, Unincorporated Areas	510157	Mar. 25, 1974, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Region IV				
Tennessee: Jefferson County, Unincorporated Areas	470097	Mar. 29, 1982, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Region V				
Ohio:				
Belle Valley, Village of, Noble County	390429	Sept. 22, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Morgan County, Unincorporated Areas		Feb. 24, 1977, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Data certain federal assistance no longer available in special flood hazard areas
Rutland, Village of, Meigs County	390670	Sept. 3, 1975, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Region VII				
Missouri: Portageville, City of, New Madrid County	290259	May 17, 1974, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Region X				
Nevada: Nye County, Unincorporated Areas	320018	Jan. 15, 1976, Emerg.; Nov. 2, 1990, Reg.; Nov, 2, 1990, Susp.	11-2-90	Do.
Region I				
Connecticut: Goshen, Town of, Litchfield County	090177	Aug. 25, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Nov. 16, 1990.
Region III				
Pennsylvania:				
Bigler, Township of, Clearfield County	421514	Jan 22, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Butler, Township of, Schuylkill County	421999	Sept. 15, 1975 Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Decatur, Township of Clearfield County	421189	Mar. 18, 1977, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Everett, Borough of, Bedford County	420119	Jan. 13, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Gulich, Township of, Clearfield County	421524	Jan. 21, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Osceola Mills, Borough of, Clearfield County	420313	Feb. 22, 1977, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Rush, Township of, Centre County	421468	Feb. 11, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Virginia: Suffolk, City of, Independent City	510156	Jan. 22, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Region V				
Michigan:				
Adrian, Township of, Lenawee County	260635	Sept. 5, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Northfield, Township of, Washtenaw County	260732	Oct. 20, 1982, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Ohio: Hocking County, Unincorporated Areas	390272	Apr. 18, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Wisconsin:				
Adams County, Unincorporated Areas	550001	May 31, 1974, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Blair, City of, Trempealeau County	550440	Feb. 27, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov, 16, 1990, Susp.	11-16-90	Do.
Friendship, Village of, Adams County	481209	Jan. 12, 1982, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
La Farge, Village of, Vernon County	550456	May 8, 1975, Emerg.; Nov. 16, 1990, Reg., Nov. 16, 1990, Susp.	11-16-90	Do.
Montello, City of, Marquette County	550266	June 5, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Whitehall, City of, Trempealeau County	550449	Feb. 7, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Readstown, Village of, Vernon County	550458	Apr. 30, 1971, Emerg.; Mar. 16, 1976, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Vernon County, Unincorporated Areas	550450	Sept. 1, 1972, Emerg.; Sept. 29, 1978, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Region VI				
Texas:				
Alpine, City of, Brewster County	480085	Feb. 5, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Burnet County, Unincorporated Areas	481209	Jan. 12, 1982, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Granite Shoals, City of, Burnet County	481149	Sept. 22, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Marble Falls, City of, Burnet County	480093	Apr. 16, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
Meadowlakes, City of, Burnet County	481613	Apr. 13, 1989, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.

State and Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Data certain federal assistance no longer available in special flood hazard areas
Region VIII				
Nebraska: Indianola, City of, Red Willow County	310382	Oct. 20, 1975, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.
All Zone D Conversions				
Region VIII				
Utah: Tooele County, Unincorporated Areas	490140	June 7, 1976, Emerg.; Nov. 16, 1990, Reg.; Nov. 16, 1990, Susp.	11-16-90	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: October 2, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23760 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 65

[Docket No. FEMA-7002]

Changes in Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California	Sonoma	City of Santa Rosa	*Press Democrat*, September 21, 1990 and September 28, 1990.	The Honorable John Healy, Mayor, City of Santa Rosa, City Hall, P.O. Box 1678, Santa Rosa, California 95402.	September 5, 1990	060381
Colorado	Jefferson	Unincorporated Areas	October 2, 1990, October 9, 1990, *Lakewood Sentinel.*	The Honorable Rich Ferdinandsen, Chairman, Jefferson County Board of County Commissioners, Courthouse, 1700 Arapahoe, Golden, Colorado 80419-0001.	September 20, 1990	080087
Georgia	Liberty	City of Hinesville	September 21, 1990, September 28, 1990, *Hinesville Coastal Courier.*	The Honorable Buddy DeLoach, Mayor, City of Hinesville, 115 East Martin Luther King Jr. Drive, Hinesville, Georgia 31313-3699.	September 7, 1990	130125
Illinois	McLean	Town of Normal	September 6, 1990, September 13, 1990, *Normalite Newspaper.*	The Honorable Dave Anderson, City Manager, 100 E. Phoenix, Normal, Illinois 61761-0589.	August 27, 1990	170502
Louisiana	St. John the Baptist Parish.	Unincorporated areas	August 30, 1990, September 6, 1990, *LaPlace L'Observateur.*	The Honorable Lester J. Millet, Jr., Parish President, St. John the Baptist Parish, 1801 West Airline Highway, LaPlace, Louisiana 70068.	August 24, 1990	220164 C
Minnesota	Olmsted	City of Rochester	September 21, 1990, September 28, 1990, *Rochester Post Bulletin.*	The Honorable Chuck Hazama, Mayor, City of Rochester, 224 1st Avenue S.W., Rochester, Minnesota 55902.	September 7, 1990	275246

Issued: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23761 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Iowa et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participating in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Iowa	Dubuque (Docket No. FEMA-6995).	City of Sageville	June 15, 1990, June 22, 1990, *Dubuque Telegraph Herald.*	The Honorable Ralph Dean, Mayor, City of Sageville, 11948 Sherrill Road, Dubuque, Iowa 52001.	June 4, 1990	190122
Maryland	Anne Arundel (FEMA Docket No. 6988).	Unincorporated areas	April 5, 1990, April 12, 1990, *The Capital.*	Mr. O. James Lighthizer, Anne Arundel County Executive, 44 Calvert Street, Annapolis, Maryland 21401.	March 7, 1990	240008
Maryland	Queen Annes (FEMA Docket No. 6986).	Unincorporated area	March 7, 1990, March 14, 1990, *Queen Annes County Record-Observer.*	Mr. Robert Sallitt, Queen Annes County Administrator, 208 North Commerce Street, Centreville, Maryland 21617.	February 28, 1990	240054
Oklahoma	Cleveland (FEMA Docket No. 6999).	City of Norman	January 30, 1990, February 5, 1990, *The Norman Transcript.*	The Honorable Dick Reynolds, Mayor of the City of Norman, Cleveland County, P.O. Box 370, Norman, Oklahoma 73070.	January 19, 1990	40006 C
South Carolina	Richland (Docket No. FEMA-6993).	City of Columbia	May 31, 1990, June 7, 1990, *The State.*	The Honorable Miles Hadley, City Manager, City of Columbia, P.O. Box 147, Columbia, South Carolina 29217.	May 24, 1990	450172
South Carolina	Richland (Docket No. FEMA-6993).	City of Forest Acres	May 31, 1990, June 7, 1990, *The State.*	The Honorable Royce G. Waites, Mayor, City of Forest Acres, 5205 TrenHolm Road, Forest Acres, South Carolina 29206.	May 24, 1990	450174
South Carolina	Richland (Docket No. FEMA-6993).	Unincorporated areas	May 31, 1990, June 7, 1990, *The State.*	The Honorable George Krausz, County Administrator, Richland County, 1701 Main Street, P.O. Box 192, Columbia, South Carolina 29202.	May 24, 1990	450170

Issued: September 21, 1990.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23759 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determination; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management

Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Action 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so not regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State, city/town/county, source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ALABAMA	
Lauderdale County (unincorporated areas) (FEMA Docket No. 6992)	
Bluewater Creek:	
At mouth	*509
About 2400 feet upstream of Lee Highway	*531
Indiancamp Creek:	
At mouth	*519
About 1400 feet downstream of County Road	*519
Shoal Creek:	
At mouth	*508
About 3.6 miles upstream of County Highway 47	*528
Tennessee River:	
Just upstream of Wilson Dam	*508
About 15.5 miles upstream of Wilson Dam	*511
Maps available for inspection at the County Courthouse, 200 South Court Street, Room 303, Florence, Alabama 35630.	
ARKANSAS	
Hot Springs (city), Garland County (FEMA Docket No. 6989)	
Spencer Bay: Entire shoreline within community	*318
Ouachita River (Lake Hamilton): Entire shoreline within community	*404
Maps available for inspection at the City Hall, 133 Convention Street, Hot Springs, Arkansas.	
COLORADO	
Englewood (city), Arapahoe County (FEMA Docket No. 6996)	
Little Dry Creek:	
At South Platte River Drive	*5,267
Approximately 200 feet downstream of South Santa Fe Drive	*5,271
Approximately 140 feet upstream of South Santa Fe Drive	*5,273
Approximately 760 feet upstream of South Santa Fe Drive	*5,281
Approximately 160 feet downstream of South Broadway	*5,310
Approximately 50 feet upstream of Lincoln Street	*5,319
Approximately 80 feet upstream of Sherman Street	*5,320
Approximately 100 feet upstream of Highway 235	*5,322
At Logan Street	*5,324
Maps available for review at City Hall, 3400 South Elati Street, Englewood, Colorado.	
IOWA	
Cedar Rapids (city), Linn County (FEMA Docket No. 6992)	
Vinton Ditch:	
Just upstream of 15th Street	*740
Just downstream of 19th Street NW	*744
Just upstream of 19th Street NW	*754
Just downstream of Shelley Lane	*782
Maps available for inspection at City Hall, Planning & Zoning Department, Second Avenue, Cedar Rapids, Iowa.	
MISSOURI	
Herculaneum (city), Jefferson County (FEMA Docket No. 6992)	
Bonacher Creek:	
At mouth	*412
Just downstream of Coachman Drive	*419
Just upstream of Coachman Drive	*428
Just downstream of upstream crossing of McNutt Street	*448
Just upstream of upstream crossing of McNutt Street	*455
Maps available for inspection at the Building Inspector Department, No. 1 Parkway Court, Herculaneum, Missouri, Attention: Mr. Ralph Williams.	
Ladue (city), St. Louis County (FEMA Docket No. 6977)	
Deer Creek:	
About 350 feet downstream of Rock Hill Road	*471
Just downstream of Log Cabin Lane	*487
Just downstream of Lindberg Boulevard	*518
Two Mile Creek:	
At confluence with Deer Creek	*476
About 3,700 feet upstream of Warson Road	*514
Black Creek:	
About 800 feet downstream of Wenlou Drive	*489
About 600 feet upstream of confluence of Country Club Drainage	*507
Sebago Drainage:	
At confluence with Deer Creek	*472
Just downstream of Old Warson Road	*474
Just upstream of Old Warson Road	*480
About 700 feet upstream of Old Warson Road	*484
Maps available for inspection at the Building Department, 9345 Clayton Road, Ladue, Missouri.	
Richmond Heights (city), St. Louis County (FEMA Docket No. 6977)	
Black Creek:	
About 3,000 feet downstream of Clayton Road	*472
Just downstream of Clayton Road	*485
Maps available for inspection at the Building Department, 1330 South Big Bend, Richmond Heights, Missouri.	
Rock Hill (city), St. Louis County (FEMA Docket No. 6977)	
Deer Creek:	
About 850 feet downstream of Manchester Road	*460
About 1050 feet upstream of Manchester Road	*466
Just upstream of McKnight Road	*471
Sebago Drainage:	
Just downstream of confluence of Warson Woods Creek	483
At confluence of Warson Woods Creek	*484
Maps available for inspection at the City Hall, 9620 Manchester Road, Rock Hill, Missouri	
Webster Groves (city), St. Louis County (FEMA Docket No. 6977)	
Deer Creek:	
Just upstream of Big Bend Boulevard	*445
About 1600 feet upstream of confluence of Shady Grove Creek	*459
About 2700 feet upstream of confluence of Shady Grove Creek	*460
Shady Grove Creek:	
At confluence with Deer Creek	*455
Just upstream of Kirkham Avenue	*463
Just downstream of North Rock Hills Road	*505
Maps available for inspection at the Office of Public Works, City Hall, 4 E. Blackwood, Webster Groves, Missouri.	
OHIO	
Bremen (village), Fairfield County (FEMA Docket No. 6992)	
Little Rush Creek:	
At mouth	*796
Just downstream of Conrail	*796
Just upstream of Conrail	*798
Maps available for inspection at the Village Hall, 132 Mulberry Street, P.O. Box 127, Bremen, Ohio.	
OKLAHOMA	
Muskogee (city), Muskogee County (FEMA Docket No. 6989)	
Sam Creek:	
At State Route 16 (York Street) downstream corporate limits	*529

State, city/town/county, source of flooding and location	#Depth in feet above ground. ¥Elevation in feet (NGVD). Modified
Approximately .3 mile downstream of Gulick Avenue	*539
Sam Creek Tributary B:	
At confluence with Sam Creek	*536
Approximately .56 mile upstream of confluence with Sam Creek	*549
Coody Creek:	
Approximately 650 feet upstream of Hancock Street	*513
Approximately 250 feet downstream of Union Pacific Railroad	*539
Corta Creek:	
Approximately .2 mile downstream of Gulick Street	*530
Approximately .8 mile downstream of Cherokee Drive	*541
Maps available for inspection at the City Hall, 3rd & Okmulgee, Muskogee, Oklahoma.	
Porum (town), Muskogee County (FEMA Docket No. 6989)	
Porum Creek Tributary A:	
At Delaware Avenue	*582
Approximately 1,000 feet upstream of Cherokee Avenue	*589
Maps available for inspection at the City Hall, 2nd & Seminole, Porum, Oklahoma.	
SOUTH CAROLINA	
York County (unincorporated areas) (FEMA Docket No. 6992)	
Catawba River:	
At confluence of Sugar Creek	*493
Just downstream of Wylie Dam	*524
Sugar Creek:	
At mouth	*493
About 1.1 miles upstream of Dobys Bridge Road	*493
Manchester Creek:	
At mouth	*502
About 3550 feet upstream of mouth	*502
Johnnytown Branch:	
At mouth	*522
About 1500 feet upstream of State Route 251	*523
Little Dutchman Creek:	
At mouth	*518
Just upstream of mouth	*518
Big Dutchman Creek:	
At mouth	*518
About 3400 feet upstream of Mt. Gallant Road	*518
Maps available for inspection at the Planning Department, 1070 Heckle Boulevard, Rock Hill, South Carolina 29730.	
Texas	
Bandera County (unincorporated areas) (Fema Docket No. 6969)	
Medina River:	
Approximately .89 mile upstream of confluence of San Julian Creek	*1,201
Approximately .4 mile upstream of the Mayan Ranch Road	*1,252
Maps available for inspection at the County Courthouse, 500 Main Street, Bandera, Texas.	
Dickinson (city), Galveston County (FEMA Docket No. 6992)	
Magnolia Bayou:	
At confluence with Dickinson Bayou	*12
Upstream corporate limits	*14
Bordens Gully:	
Approximately 130 feet upstream of Spruce Drive	*12
Approximately 180 feet upstream of Deats Road	*13
Maps available for inspection at the Building Department. 2716 Main, Dickinson, Texas.	
Galveston County (unincorporated areas) (FEMA Docket No. 6992)	
Magnolia Bayou: Approximately 1.53 miles upstream of confluence with Dickinson Bayou	*14
Maps available for inspection at the County Engineer's Office, 123 Rosenberg, Galveston, Texas.	
Lockhart (city), Caldwell County (FEMA Docket No. 6989)	
Town Branch:	
At downstream corporate limits	*441
At a point approximately 920 feed downstream of Stueve Road	*533
T-B1:	
At confluence with Town Branch	*522
At MK&T Railroad	*531
Mebane Creek:	
Approximately .39 mile downstream of State Highway 20	*512
Approximately 65 feet upstream of Clear Fork Road	*538
Maps available for inspection at the Municipal Building, 308 West San Antonio, Lockhart, Texas.	
VIRGINIA	
Tazewell County (Unincorporated Areas) (FEMA Docket No. 6989)	
Clinch River:	
Approximately .15 mile downstream of Jenkins Road	*1,912
Approximately .6 mile upstream of Jenkins Road	*1,916
Maps available for inspection at the Tazewell County Offices, 315 School Street, Tazewell, Virginia.	

Issued: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23762 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-420; RM-6845]

Radio Broadcasting Services; Brockport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Rosenkrans, allots Channel 288A to Brockport, New York, as the community's first local commercial FM service. *See* 54 FR 41128, October 5, 1989. Channel 288A can be allotted to Brockport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 288A at Brockport are North Latitude 43-12-48 and West Longitude 77-56-24. Canadian concurrence has been received. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-420, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.Cc. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New York, is amended by adding Brockport, Channel 288A.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23736 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFC Part 73

[MM Docket No. 89-433; RM-6833]

Radio Broadcasting Services; Arthur, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Regina Timmerman and Valotta Hazel Seibel, allots Channel 244A to Arthur, North Dakota, as that community's first local FM service. *See* 54 FR 41466, October 10, 1989. Channel 244A can be allotted to Arthur in

compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 244A at Arthur are North Latitude 47–06–24 and West Longitude 97–13–06. Canadian concurrences has been obtained since Arthur is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–433, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Channel 244A to Arthur.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–23737 Filed 10–5–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–472; RM–6919]

Radio Broadcasting Services; Lincoln City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of FLS Radio Enterprises, allots Channel 236C2 to Lincoln City, Oregon, as that community's second local FM service. *See* 54 FR 47797, November 17, 1989. Channel 236C2 can be allotted to Lincoln City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 236C2 are North Latitude 44–57–06 and West Longitude 124–00–54. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–472, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 236C2 at Lincoln City.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–23738 Filed 10–5–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–466; RM–6906]

Radio Broadcasting Services; Oil City, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stephen M. Olszowka, allots Channel 242A to Oil City, Pennsylvania, as that community's second local FM service. *See* 54 FR 46633, November 6, 1989. Channel 242A can be allotted to Oil City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242A at Oil City are North Latitude 41–25–30 and West Longitude 79–42–24. Canadian concurrence has been received since Oil City is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective November 19, 1990. The window period for filing applications will open on November 20, 1990, and close on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–466, adopted September 19, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 242A at Oil City.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–23739 Filed 10–5–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89-445; RM-6820]

Radio Broadcasting Services; Athens, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 269C3 for Channel 269A at Athens, Tennessee, and modifies the license of Station WJSQ-FM to specify operation on the higher class co-channel, at the request of James C. Sliger. *See* 54 FR 42523, October 17, 1989. The coordinates for Channel 269C3 at Athens are 35-28-31 and 84-23-59. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-445, adopted September 18, 1990, and released October 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Tennessee by removing Channel 269A and adding Channel 269C3 at Athens.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-23740 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 900937-0237]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: The Secretary of Commerce issues this final rule to amend the regulations requiring shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the southeastern United States to use Turtle Excluder Devices (TEDs) to reduce incidental captures of endangered and threatened sea turtles during shrimp fishing operations. This rule recognizes that an additional "soft" TED (the Andrews TED) has been certified as an approved TED and recognizes that an alternate scientific protocol for certifying TEDs has been established. The alternate scientific protocol appears elsewhere in this issue of the **Federal Register**. The intended effect is to increase the options of fishermen required to use TEDs.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Phil Williams, (301) 427-2322 or Charles A. Oravetz, (813) 893-3366.

SUPPLEMENTARY INFORMATION:

a. Background

The Secretary of Commerce issued a final rule on June 29, 1987 (52 FR 24244) which requires shrimp trawlers 25 feet or more in length to use qualified TEDs in certain offshore waters of the southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

The final rule was designed to reduce the incidental catch and mortality of sea turtles in shrimp trawls. The rule initially allowed the use of four types of TEDs. It has since been amended to allow the use of two additional TEDs, the Morrison and Parrish. It also contains a provision for qualification of new TEDs if these TEDs are tested according to procedures specified in an appendix to the rule and found to be 97 percent effective in releasing sea turtles from trawls.

b. Andrews TED Testing

The Andrews TED was tested by NMFS at Panama City, Florida, in May 1989 in trials using an alternative certification protocol. The trials consisted of two parts, (1) an evaluation of actual turtle release from TED equipped nets by NMFS scuba divers who video taped the tests and (2) an evaluation of test results by a panel of industry, Sea Grant, and environmental representatives, and NMFS scientists and gear specialists. The NMFS TED previously certified and found to be 97 percent effective in releasing sea turtles was used as the control; i.e., the Andrews TED design tested had to meet the same turtle exclusion rate as the NMFS TED. In initial testing, the NMFS TED-equipped control net caught 4 turtles out of 25 introduced. This then became the standard for certification.

The Andrews TED, constructed of 8 inch stretch poly webbing failed the test. Nine turtles were captured out of seventeen turtles introduced into the net equipped with the Andrews TED indicating it would fail even if additional turtles were introduced into the net.

The manufacturer of the Andrews TED was then given an opportunity to reduce the mesh size in its TED. Most of the captured turtles were being entangled in the 8 inch webbing which appeared to be too large. The maker of the Andrews TED secured 5 inch stretch mesh webbing and installed this modified TED in the test net for retesting.

In final testing, the Andrews TED constructed of 5 inch stretch mesh passed the diver observed test. Only one turtle was captured in the 5 inch Andrews TED out of 25 introduced.

During the second phase of the certification process, the panel reviewed videos of the turtle releases and evaluated the catch and release data. The panel scoring of the NMFS TED was 23 releases out of 25 turtles introduced in the trawl. The panel scoring of the 5 inch Andrews TED was 25 escapes out of 25 introduced.

c. TED Certification

The Andrews TED constructed of 5 inch poly webbing is certified for use wherever a TED is required. This certification is based on the results of actual at-sea testing of the Andrews TED and the review panel's evaluation. The Andrews TED with the 5 inch webbing exceeded the standard established by the NMFS TED control trawl and its catch rate satisfied the 97 percent turtle exclusion rate.

d. Classification

This action is in compliance with Executive Order 12291. Notice and comment on this final rule are unnecessary and contrary to the public interest because it merely gives the public notice that the Andrews TED has passed the test and may be used lawfully. Delayed effectiveness is not required because this technical amendment relieves a restriction.

As no statute requires notice and comment on this final rule, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under Executive Order 12291, does not contain policies with federalism implications requiring assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

List of Subjects in 50 CFR Part 227

Endangered species, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 28, 1990.

Michael Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.72, a new paragraph (e)(4)(ii)(G) is added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(G) *Andrews TED* (Figures 8a and 8b). The Andrews TED is constructed of 5 inch stretch mesh polyethylene or polypropylene webbing that is sewn around its entire perimeter inside a shrimp trawl. It is a trawl within a trawl. The leading edge of the Andrews TED is sewn to the top of the outer trawl at a point corresponding to the full circumference of meshes, 20 meshes behind the center of the footrope. Lacing with rope is not allowed. The TED tapers to an exit hole in the bottom of the trawl. The rear edge of the hole is located no more than 20 inches ahead of the intermediate (extension). The trailing edge of the TED is sewn at all points around the circumference of the exit hole. The exit hole is 96 inches in circumference.

BILLING CODE 3510-22-M

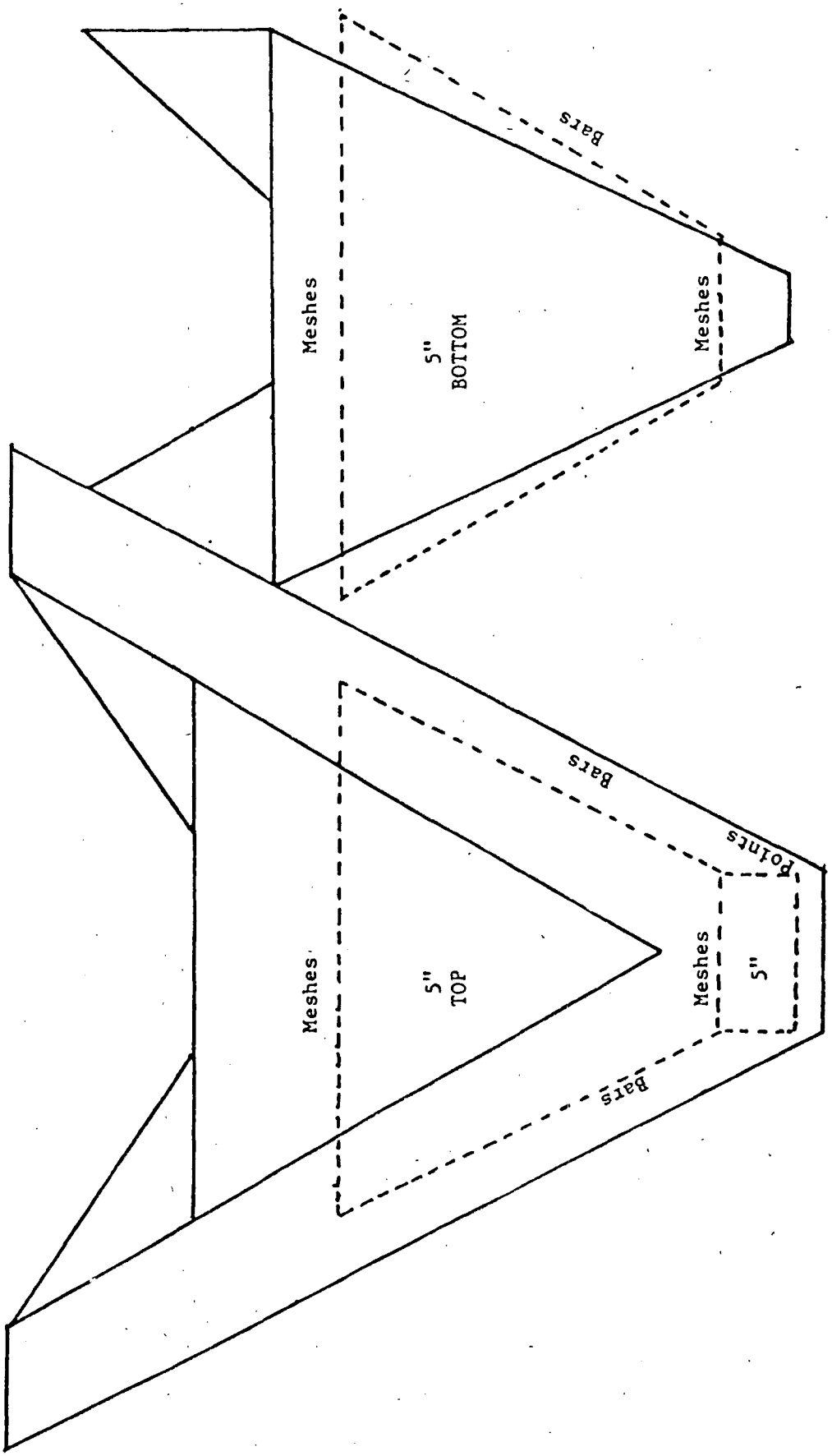

Figure 8a

ANDREWS TED

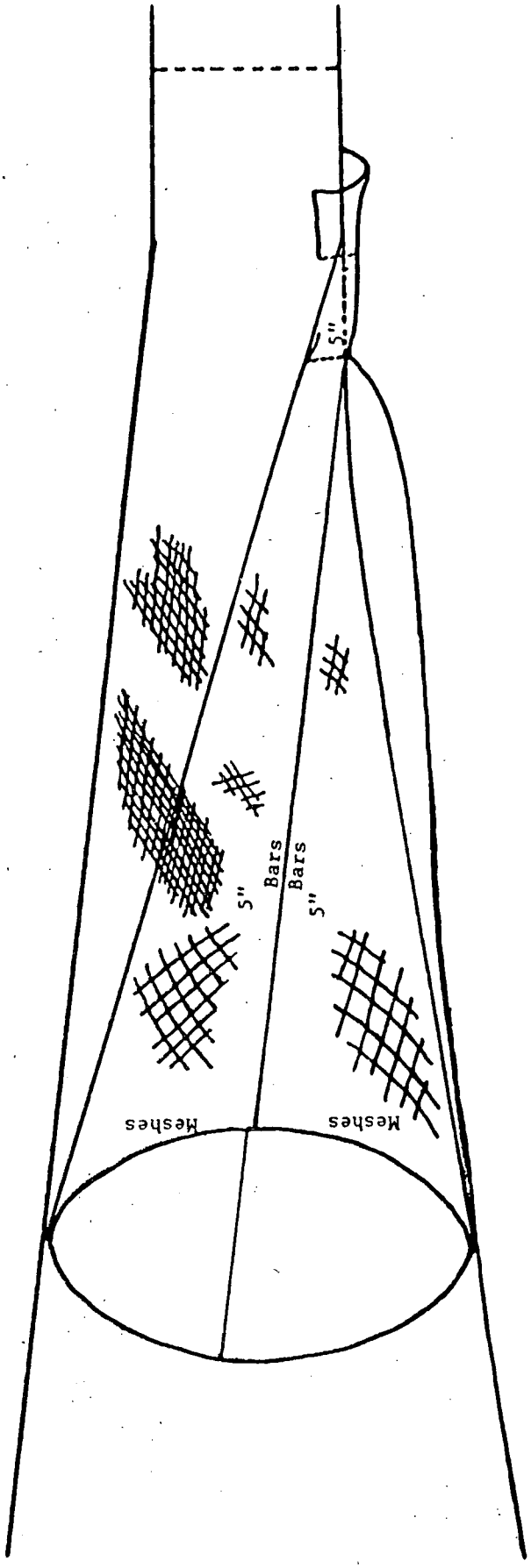

Figure 8 b

ANDREWS TED

[FR Doc. 90-23581 Filed 10-5-90; 8:45 am]
BILLING CODE 3510-22-C

50 CFR Part 227

Turtle Excluder Devices; Adoption of Alternative Scientific Testing Protocol for Evaluation

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of adoption of alternative scientific testing protocol for evaluating turtle excluder devices (TEDs).

SUMMARY: Notice is hereby given that NMFS approves an alternate scientific protocol for evaluating TEDs using headstarted juvenile turtles and diver and expert panel evaluations. The intended effect is to provide an optional testing procedure for certifying TEDs. This alternative protocol will supplement, rather than replace, the original protocol published as an appendix to the final rule that implemented the TED requirements.

DATES: The alternate scientific protocol is adopted upon publication in the **Federal Register**. Comments must be received by November 8, 1990.

ADDRESSES: Comments should be submitted to Nancy Foster, Ph.D., National Sea Turtle Coordinator, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, (301) 427–2322, Wilber R. Seidell, (601) 762–4591, or Charles A. Oravetz, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

a. Background

The Sea Turtle Conservation regulations, issued on June 29, 1987 (52 FR 24244) require shrimp trawlers 25 feet or more in length to use qualified TEDs in certain offshore waters of the southeastern United States during certain times of the year and to limit trawl tow times to 90 minutes (or use TEDs) in inshore waters during these same times. Shrimp trawlers less than 25 feet in length are required to limit trawl tow times to 90 minutes in inshore and offshore waters during certain times.

The final rule was designed to reduce the incidental catch and mortality and sea turtles in shrimp trawls. The rule initially allowed the use of four types of TEDs. It has since been amended to allow the use of three additional TEDs, the Morrison, Parrish and Andrews. The Andrews TED has been certified using the alternative testing procedure described in this notice. An amendment to the final rule certifying the Andrews TED is being published elsewhere in this issue of the **Federal Register**. The final rule adopts the alternative testing procedure.

The final rule contains a provision for qualification of new TEDs if they are tested according to procedures specified in an appendix to the rule published on June 29, 1987, and found to be 97 percent effective in releasing sea turtles from trawls. The appendix does not appear in the code of Federal Regulations. The original procedure for certifying TEDs was to conduct comparison testing of a TED-equipped trawl against a standard trawl in the Cape Canaveral, Florida navigational channel. The channel is known for its historical high abundance of loggerhead sea turtles. However, in March 1989, there were not enough turtles at Canaveral to conduct TED testing.

Because of small numbers of turtles at Canaveral, NMFS developed an alternate testing protocol using juvenile captive reared turtles. Each year NMFS raises about 2,000 Kemp's ridley turtles for 9 months and releases these turtles into the Gulf of Mexico as part of a cooperative experiment with the Mexican Government, U.S. Fish and Wildlife Service, and the National Park Service. This project is commonly referred to as the headstart project. The turtles used for TED testing represented the size classes of Kemp's ridley turtle most frequently found in the wild. In contrast, sea turtles found in the Cape Canaveral Channel are usually older and much larger.

NMFS used a shrimp trawler and 90 juvenile Kemp's ridley headstarted turtles to test several TED designs off Panama City, Florida. Scuba divers released the turtles into the trawls. After the turtles were passed through the trawl they were released alive into their natural habitat. NMFS also had experimented with alternate methods of certifying TEDs in August 1988, using headstarted green turtles obtained from Florida.

The NMFS certification trials using the headstarted juvenile sea turtles consist of two parts, (1) an evaluation of actual turtle release from TED equipped nets by NMFS scuba divers who videotape the tests and (2) an evaluation of test results by a panel of industry, Sea Grant, environmental, and NMFS scientists and gear specialists. The NMFS TED, previously certified and found to be 97 percent effective in releasing sea turtles, is used as the control; i.e., new TED designs must meet the same turtle exclusion rate as the NMFS TED under the same test conditions.

b. Alternate Scientific Protocol for Evaluating Candidate Turtle Excluder Devices

Description of Methods

Methods used for this testing procedure rely on evaluation by an experienced team of NMFS divers familiar with working in and around operating trawls. Testing is conducted in clear shallow waters offshore of Shell Island near Panama City, Florida, or an alternate site if conditions are deemed suitable.

Scuba divers conduct preliminary observations and make underwater video recordings of candidate TED designs. Videotapes are then reviewed by the participating TED designer or representative in order to determine if tuning or modifications are necessary prior to testing. When the designer is satisfied with the configuration of the candidate TED, testing is initiated. No further changes to the TED design are allowed once the test has started.

The TED equipped trawl is single rigged and towed directly astern of a vessel at 2.5 knots. A messenger wire is incorporated into the trawl bridle and attached from the towing vessel to the center of the trawl headrope. Turtles are transported from the towing vessel to the trawl headrope inside a herculite bag which is attached to and slides along the messenger wire.

Three scuba divers are used to conduct the test. Diver No. 1 releases each turtle under and behind the trawl headrope. Diver No. 2 records elapsed time and removes the turtle from the trawl if escape through the candidate TED has not occurred within the prescribed time limit after release. Diver No. 3 records the entire sequence with a video camera.

Once released into the trawl, a turtle is given a total of 5 minutes in which to escape through the candidate TED. This time limitation is designed to minimize submergence related stress to the test turtle. At the end of the 5 minute period, the turtle is scored either as an escape (having successfully exited the trawl through the TED) or a capture (the turtle did not exit the trawl through the TED within 5 minutes). Previous testing using this method in the 1988 and 1989 studies indicated that 87 percent of the turtles scored as escapes did so within the first 2 minutes after being released into the trawl. The 5 minute time limit, therefore, has been determined to be a sufficient period in which to identify technical problems associated with a turtle's escape through a test TED.

Turtles may be removed from the test before the 5 minute time limit has

expired if the health of the turtle is at risk. In this case, the turtle would not be included in the test sample set. Another trial release would be conducted and substituted for the omitted trial.

Turtle Acquisition

This alternate test protocol for TED qualifications requires an adequate supply of 2 to 3 year old sea turtles. Presently, these need to be supplied through the sea turtle headstarting program at the NMFS Galveston, Texas laboratory. Each year a quantity of turtles will be held back from the normal release program for use in TED qualification tests. Turtles used for the tests will be of a size no smaller than that of the average 2 year class Kemp's ridley sea turtle. Species of sea turtles which may be used for the qualification test include, loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and Kemp's ridley (*Lepidochelys kempi*).

Sampling Procedure.

The effectiveness of each candidate TED in releasing turtles will be compared to the performance of a control TED under the same test conditions in order to adjust for variability within the TED procedure. The NMFS TED has been selected as the control TED based on its documented exclusion abilities during previous controlled testing and during commercial vessel trials. The NMFS TED is currently the only TED which has been tested using both certification techniques on green, ridley, and loggerhead turtles, and the exclusion rates have been confirmed during commercial fishing operations.

The qualification test for each candidate TED will be comprised of 25 turtle releases. A candidate TED may be declared as having failed to pass the test before a complete sample set of 25 turtles has been used if the TED has reached a maximum number of captures based on the performance of the control TED (see Examples).

Statistical Approach

The statistical approach to compare performance of candidate TEDs to the performance of a control TED is to test for quality of proportions. The null hypothesis is: $H_0 : P_1 < P_2$ or the exclusion rate of the candidate TED (P_2) is equal to or higher than that of the control TED (P_1).

versus the alternative hypothesis.

$H_1 : P_1 > P_2$ or the exclusion rate of the candidate TED (P_2) is lower than that of the control TED (P_1) That is, the null hypothesis will be that the candidate TED releases at least as many turtles as the control TED versus the alternative, that the candidate TED releases fewer turtles than the control TED. The test statistic is:

$$Z = \hat{P}_1 - \hat{P}_2 \,/\, ([\hat{p}_1\hat{q}_1 \,/\, n_1] + [\hat{p}_2\hat{q}_2 \,/\, n_2])^{1/2}$$

where

$\hat{P}_1$ = the observed proportion excluded by the control

$\hat{P}_2$ = the observed proportion excluded by the candidate

$\hat{q}_1 = 1 - \hat{p}_1$, and

$\hat{q}_2 = 1 - \hat{p}_2$,

n_1 = the number of turtles introduced through the control

n_2 = the number of turtles introduced through the candidate

Then, the calculated Z score is compared to the appropriate percentile Z score to make a decision.

In any hypothesis testing situation two types of error are involved. In the present situation, a Type I error is committed if an acceptable candidate TED is rejected. A Type II error is committed if a poorly performing candidate TED is accepted. The probability of committing a Type I and a Type II error is denoted by α and β, respectively. The chances of committing these errors (α and β) are inversely related to fixed sample sizes.

Depending upon the acceptable level of α and β), and the results of the control TED, the maximum number of captures for the candidate TED can be determined which will lead to the rejection of the null hypotheses. These computations will allow the TED qualification tests to be terminated earlier if the number of captures for these candidate TEDs exceeds this predetermined number. Some examples comparing the performance of candidate TEDs to the performance of the control TED follow:

Example 1. Testing of the control TED resulted in 21 turtle exclusions and 4 captures within the prescribed 5 minute time interval. Based on these results, the risk of rejecting an acceptable candidate TED (α) is calculated for various capture rates.

Candidate TED turtle captures	Risk [1]
6	0.25
7	0.15
8	0.10
9	0.05
10	0.03

[1] Risk of rejecting an acceptable TED (α).

Testing of candidate TED *A* resulted in 9 turtles captures out of 17 introduced into the net. The test was terminated after nine captures to reserve turtles for additional testing. This decision was possible because even if it was assumed that the additional 8 turtles (all remaining to complete the sample of 25) would have been released from the TED (i.e., 9 captures out of 25 turtles tested), the probability of falsely rejecting this TED would be less than 5 percent.

Testing of candidate TED *B* resulted in 7 captures out of 18 introduced into the net. Assuming an additional 7 turtles (all remaining) would have been released from the TED and escaped, (i.e., 7 retentions out of 25 turtles tested), the probability of falsely rejecting this TED will be about 15%.

Example 2. Testing of the control TED resulted in 23 escapes and 2 captures out of 25 turtles released within the prescribed 5 minute time interval. Based on these results the risk of rejecting an acceptable candidate TED is calculated for various capture rates.

Candidate TED turtle captures	Risk [1]
4	0.20
5	0.11
6	0.06
7	0.03
8	0.014

[1] Risk of rejecting an acceptable TED (α).

Candidate TED *C* resulted in 5 captures out of 25 turtles introduced into the net. Given this, the probability of falsely rejecting this TED will be 11%.

Candidate TED *D* resulted in 8 captures out of 17 turtles introduced into the net. If testing is terminated after 17 trials, and if it is assumed that the remaining 8 turtles would have escaped (i.e., 8 captures out of 15 turtles tested) then the probability of falsely rejecting this TED will be 1.4%.

Thus the acceptance or rejection of the candidate TED will be based on α. (A predetermined risk for rejection of an acceptable TED).

Review Committee

Upon completion of the qualification tests, a technical review committee may be convened to review all test results. The committee will be comprised of industry, conservation and government representatives. The committee will review and confirm the results of the qualification tests, and make a recommendation to the NMFS Southeast Regional Director as to which candidate TEDs passed the certification test.

Conclusion

NMFS has concluded that a TED that passes the certification tests specified in the Alternative Scientific Protocol will have a turtle exclusion rate of 97 percent or more.

Authority: 16 U.S.C. 1531 et seq.

Dated: September 28, 1990.

Michael Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-23583 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 47

[Docket No. FV-89-205]

Amendment to Rule of Practice

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This Action proposes to amend § 47.6(b) of the Rule of Practice under the Perishable Agricultural Commodities Act (PACA). This amendment would modify the exemption for nonresident complainants in reparation actions to make it clear that the Secretary has discretionary authority under 7 U.S.C. 499f)(e) to waive the furnishing of a bond by a foreign complainant. The amendment explains discretion of the Secretary to waive the bond in those instances when the complainant's country provides an administrative forum similar to that available under PACA to receive produce related claims by residents of the United States.

DATES: Written comments must be postmarked on or before November 8, 1990.

ADDRESSES: Written comments should be sent in duplicate to: James R. Frazier, Assistant Chief, PACA Branch, room 2095 So., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, CD 20090–6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Frazier, (202) 447–3212.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "non major" under the criteria therein.

Pursuant to regulations set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of Agricultural Marketing Service (AMS) has considered the economic impact of this section on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be disproportinately burdened. This proposed amendment will affect only nonresident businesses in the manner set forth below. Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revisioin of the rules of practices under the PACA will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

This proposed amendment would modify the regulatory exemption for nonresident complainants in reparation proceedings to make it consistent with 7 U.S.C. 499f(e) which provides that the Secretary has discretionary authority to waive the furnishing of a bond. The law provides:

> In case a complaint is made by a nonresident of the United States, or by a resident of the United States to whom the claim of a nonresident of the United States has been assigned, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Secretary of Agriculture against the complainant or any counter claim by respondent: *Provided,* That the Secretary shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the funrishing of a bond.

The authority of waive the bond requirement was added in 1937 in response to complaints by Canadian interests. Ch. 719 Section 9, 50 Stat. 728, August 20, 1937. It was recognized at that time that Canada provided an administrative forum in which residents of the United States could sue without posting a bond. The law was amended, therefore, to provide the Secretary discretion to waive the bond requirement when a complainant's country provided a comparable, e.g., administrative, forum to consider claims by citizens of the United States.

7 CFR 47.6(b) of the "Rules of Practice Under the Perishable Agricultural Commodities Act, 1930" stated:

> (b) Bond required if complainant is nonresident. If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fee, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided,* That the furnishing of a bond shall be waived if the complainant is a resident of a country which permits filing of a complaint by a resident of the United States against a citizen of that country without the furnishing of a bond.

The regulation makes no mention of the criteria that there exist a comparable administrative forum in the complainant's country. Rather, it permits a waiver if the country of a nonresident which files a complaint permits citizens of the United States to file complaints without furnishing a bond, without specifying the type of forum.

Since the publication of § 47.6(6) in its current form, commerce involving perishable agricultural commodities has changed dramatically. Businesses in many countries now buy from and sell produce to the United States. If a foreign complainant is not required to post a bond, a citizen of the United States who prevails in a PACA reparation proceeding may not be able to collect any judgment to which it is entitled since there would be no bond to protect it. It could be forced to bring another lawsuit in a judicial forum in the country of the non-citizen, where it might find it necessary to incur the expense of employing foreign legal counsel and encounter significant delays. This would be inequitable and contrary to the intent of the PACA.

PACA provides an administrative forum which allows the resolution of disputes involving small amounts of

money without the necessity of a formal hearing or hiring counsel, utilizes relaxed rules of evidence, and provides for suspension of the license of the offending party for noncompliance with an award. Under the terms of the proposed amendment, residents of countries which have administrative forums or their equivalent which are substantially similar to that provided under PACA may apply to the Secretary for a waiver of the bond requirement.

List of Subjects in 7 CFR Part 47

Administrative practices and procedure, Agricultural Commodities, Brokers.

For the reasons set forth in the preamble, 7 CFR part 47 is proposed to be amended as follows.

PART 47—[AMENDED]

1. The authority citation for part 47 continues to read as follows:

Authority: 7 U.S.C. 499f(e).

2. Section 47.6, paragraph (b) is revised to read as follows:

§ 47.6 Formal complaints.

* * * * *

(b) *Bond required if complainant is nonresident.* If formal complaint for reparation is filed by a nonresident of the United States, complainant shall first file a bond in double the amount of the claim either with a surety company approved by the Treasury Department of the United States as surety or with two personal sureties, each of whom shall be a citizen of the United States and shall qualify as financially responsible for the entire amount of the bond. The bond shall run to the respondent and be conditioned upon the payment of costs, including reasonable attorney's fees, for the respondent if the respondent shall prevail, and of any reparation award that may be issued by the Secretary against the complainant on any counterclaim asserted by respondent: *Provided*, That the furnishing of a bond may be waived at the discretion of the Secretary if the complainant is a resident of a country which permits the filing of a complaint in an administrative forum or its equivalent which is substantially similar to that provided under the Perishable Agricultural Commodities Act by a resident of the United States against a citizen of that country without the furnishing of a bond. Nothing in this section shall limit the discretion of the Secretary to deny such a waiver in order to effectuate the purposes of the Act or to protect the interests of the businesses concerned.

* * * * *

Dated: October 2, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-23765 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD32

Emergency Response Data System

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend 10 CFR part 50 of its regulations to require licensees to participate in the Emergency Response Data System (ERDS) program and to set a definite schedule for its implementation. The ERDS is a direct electronic data link between computer data systems used by licensees and the NRC Operations Center. The ERDS would supplement the voice transmission over currently installed Emergency Notification System (ENS). The ERDS would provide the NRC Operations Center with timely and accurate values of a limited set of parameters that describe selected plant conditions. The parameter values would be taken directly from data systems existing on a licensee's onsite computer. The ERDS would be activated by a licensee during the declaration of an alert or higher emergency classification at a licensed nuclear power facility. The NRC's response role in the event of an emergency at a licensed nuclear facility is primarily to monitor the licensee to ensure that appropriate recommendations are made by the licensee regarding off-site protective actions. The proposed rule is needed to improve the NRC's capability to fulfill its response role during an emergency by better assuring that it will receive accurate and timely information on plant conditions. This action will also allow the licensee to more effectively and efficiently utilize its time and resources in collecting and transferring data to the NRC. The proposed requirement would apply to all operating nuclear power reactor facilities except Big Rock Point and those that are permanently or indefinitely shut down. However, units shut down for maintenance, or authorized only for fuel loading and low power operations are required to report under ERDS. Big Rock Point is exempt because the configuration of the facility is such that the number of parameters available are not sufficient for effective participation in the ERDS program.

DATES: Comment period expires December 24, 1990. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Mail written comments to: the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Copies of regulatory analysis, the environmental assessment and finding of no significant impact, the supporting statement submitted to OMB, and comments received may be examined at: The NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. L. Au, P.E., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3749.

SUPPLEMENTARY INFORMATION:

Background

As a result of the accident at Three Mile Island, Unit 2, on March 28, 1979, the Nuclear Regulatory Commission (NRC) and others recognized a need to substantially improve the NRC's ability to acquire accurate and timely data on plant conditions during emergencies. Before designing a system to accomplish this task, the NRC addressed several background issues dealing with its role during an accident, any changes necessary to enhance the response role to nuclear emergencies, and the information needed to support this role.

The NRC's role in the event of an emergency is primarily to monitor the licensee to ensure that appropriate recommendations are made with respect to offsite protective actions. Other aspects of the NRC's role include providing the licensee with technical analysis and logistic support, supporting offsite authorities (including confirming the licensee's recommendations to offsite authorities), keeping other Federal agencies and entities informed of the status of the incident, keeping the media informed of the NRC's knowledge of the status of the incident, and

coordinating with other public affairs groups. Detailed study has determined that the Commission's statutory authority provides a sufficient basis for carrying out this defined emergency response role.

To fulfill this emergency response role, the NRC requires reliable real-time (actual time in which a process takes place) data on four types of selected plant conditions. These conditions are:

(1) Core and coolant system conditions -- needed to assess the extent or likelihood of core damage;

(2) Conditions inside the containment building -- needed to assess the likelihood and consequence of its failure;

(3) Radioactivity release rates -- needed to assess the immediacy and degree of public danger; and

(4) Data from the plant's meteorological tower -- needed to assess the likely patterns of potential or actual impact on the public.

Site surveys, conducted by the NRC in 1986, have shown that data relevant to these conditions are maintained in the plant computer systems by a majority of the licensees. Currently during an emergency, data on these conditions is transmitted to the NRC Operations Center by the licensee through the Emergency Notification System (ENS) via voice communication by telephone.

In SECY-84-481, "Upgrading the NRC Operations Center's Emergency Data Acquisition Capability," dated December 26, 1984, it was noted that experience with the ENS voice-only emergency communications link currently addressed in 10 CFR 50.72(a) demonstrated that excessive amounts of time are needed for routine transmission of data and for verification or correction of data that appears questionable. Errors were also attributed to transcribing and interpreting voice-transmitted data. This resulted in the NRC exploring improved methods to receive accurate and timely information it requires to perform its role during an alert or higher emergency.

After evaluating several options, the NRC selected the Emergency Response Data System (ERDS) as the most appropriate option to supplement the ENS. The staff conducted prototype ERDS testing with Duke Power and Commonwealth Edison reactor units. For example, data was transmitted and beneficially used via an ERDS prototype during the Zion Full Federal Exercise in June 1987. These tests demonstrated that there was great value in using electronic data transmission for obtaining a limited set of reliable, time tagged data. With this better and more timely data, the NRC response team functioned more efficiently and their assessments were more timely. Major improvements in the ability to focus on significant factors and to predict the course of events were noted. The questions directed from the NRC Operations Center to the licensee were focused on the overall event status and corrective actions being considered, rather than simple data requests, thereby reducing the volume of voice communications.

The NRC decided to implement the ERDS initially on a voluntary basis through the issuance of a generic letter while at the same time developing a rulemaking. On August 21, 1989, the NRC issued Generic Letter 89-15 to request the voluntary cooperation of each nuclear power reactor licensee in implementing an ERDS program at each of its operational nuclear power units. However, to date only about half of the operating nuclear power units have volunteered to participate in ERDS. The NRC recognizes the importance of the ERDS in enhancing its ability to fulfill its role in the event of an emergency and has placed a high priority on the implementation of the ERDS program by all operational nuclear power units. The staff has, therefore, developed the proposed rule that would amend part 50 to require participation in the ERDS program and to set a definite schedule for its implementation.

Discussion

The ERDS would supplement the currently installed voice transmission ENS. The system will provide the NRC Operations Center with a timely and accurate limited set of parameters from the installed onsite computer systems in the event of an emergency at a nuclear power plant. Implementation of the ERDS would require each licensee to establish and maintain a computer information system which is designed to transmit a set of approximately 30 selected critical plant parameters. The ERDS would be activated by the licensee upon declaration of an alert or higher emergency condition at a licensed nuclear power reactor facility. Tests with the ERDS indicate that a computer-based transmission system is far more accurate and timely than the current practice of relaying information on plant conditions via telephone voice communication. Moreover, by automatically collecting and transmitting selected critical parameters to the NRC Operations Center, the ERDS would allow the licensee to redirect resources that now are required for voice communication of plant conditions to managing the emergency. Of course, the voice communication channel would remain available to permit needed dialogue between the licensee's facility and the NRC Operations Center during the emergency.

The proposed ERDS requirement would apply to all nuclear power reactor facilities except Big Rock Point and those that are permanently or indefinitely shut down. Big Rock Point is exempt because the facility has only five data points available for the ERDS program. Those units shut down for maintenance or authorized only for fuel loading and low power operations are required to report under ERDS.

The ERDS would become operational during (1) emergencies at the licensee's facilities and (2) emergency training exercises if the licensee's computer system has the capability to transmit the exercise data. The licensee would activate the ERDS to begin data transmission to the NRC Operations Center immediately after declaring an alert or a higher emergency classification.

The licensee would be required to provide the necessary software to assemble the data and an output communications port for each reactor unit in its in-plant computer system. The required emergency data would be transmitted to the NRC via NRC-furnished communication link hardware. The acquisition and transmission of data would not require human intervention after the system is activated, thereby ensuring uninterrupted transmission of real-time data. The data would be transmitted in a format compatible with the system at the NRC Operations Center. Guidance for format compatibility with the NRC receiving system is provided in NUREG-1394.

The two main features of the ERDS are:

- The software link, which will extract and format the requisite data to be transmitted to the NRC Operations Center; and
- The hardware link, which will connect the onsite data acquisition system of the licensee with the data transmission unit supplied by the NRC. In most cases, implementing ERDS can be accomplished with already installed equipment at the licensee's facility.

The parameters to be included in the transmission are those that, to the greatest extent possible, describe the four selected plant conditions previously mentioned. The specific parameters desired by the NRC during an emergency are given in the proposed amendment to 10 CFR part 50, appendix E, section VI, paragraph 2. The units of these parameters are pre-established for each site and will be transmitted to the NRC Operations Center without any change. If the data for a selected plant

condition parameter exists, but cannot be transmitted electronically from a licensee's system, then the licensee will continue to provide that data via the existing ENS.

With regard to the capability of the current hardware at the sites to support the generation of data required as input to ERDS, approximately 5 to 10 percent of the licensee computer systems are currently running at close to 100 percent processing capability in the post-trip or post-incident environment. Approximately 10 to 15 percent of the licensee systems are hardware limited (*i.e.*, no available output port for an ERDS connection exists). However, in many of these cases, the licensees with hardware limitations were planning to upgrade their systems in the near future for reasons other than supporting ERDS.

Each licensee would establish and maintain an ERDS configuration control program which would ensure that the NRC is notified of any changes to the ERDS on-site hardware or software. Any hardware and software changes that affect the transmitted data points identified in the ERDS Data Point Library (data base) must be reported to the NRC within 30 days after changes are completed. Any changes that could affect the transmission format and communication protocol to the ERDS must be provided to the NRC, as soon as practicable, at least 30 days prior to the modification.

Other computer systems, such as the Nuclear Data Link (NDL) were considered; however, these would require new hardware and software as well as additional personnel for both licensees and the NRC.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The regulatory analysis estimates an annual per reactor level of effort of 5 days for licensee staff and 3 days for NRC staff for the maintenance of the on-site ERDS configuration control program. An integral part of this activity is the preparation of configuration control reports by the licensee and their review by the NRC. This paperwork effort is estimated at less than one-third the overall configuration control level of effort. Thus, the reporting burden per reactor is estimated at less than 2 days per year, and the NRC's review effort is estimated at less than 1 day per reactor year. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Paperwork Reduction Project (3150-0011), Office of Information and Regulatory Affairs (NEOB-3019), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from M. L. Au, P.E., Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3749.

The NRC requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for this proposed rule. The Commission concluded that the proposed rule will provide substantial increase in the overall protection of the public health and safety by ensuring far more accurate and timely flow of data for the NRC to fulfill its role during an alert or higher emergency. The direct and indirect costs estimated for the implementation of this rule are justified in view of this increased protection. Further, the implementation and maintenance requirements of the proposed rule will have no effect on occupational radiological exposure. The backfit analysis on which this determination is based is as follows:

Item 1: Statement of the specific objective that the proposed backfit is designed to achieve.

Response: The objective of the proposed ERDS rulemaking effort is to achieve a high degree of assurance that accurate real-time data is made available to the NRC to evaluate critical parameters at any operating reactor facility during an alert or higher emergency. This in turn would improve the NRC's understanding of an event and allow the NRC to perform its role more effectively and efficiently which includes: (i) monitoring the licensee to ensure that appropriate recommendations are being made with respect to offsite protective actions; (ii) providing the licensee with technical analysis and logistic support; (iii) supporting offsite authorities; (iv) keeping other Federal agencies and entities informed of the status of the incident; and (v) keeping the media informed of the NRC's knowledge of the status of the incident.

In addition, the implementation of the ERDS would enable the licensee to better use its time and resources to effectively and efficiently deal with the emergency. The combination of better and more timely assessments of licensee actions by the NRC and the focusing of the licensee's resources to better deal with the emergency at hand together will reduce the overall risk to the public health and safety from an emergency.

Item 2: General description of the activity that would be required of the licensee or applicant in order to complete the backfit.

Response: All licensees or applicants would be required to install an NRC-supplied communication link, provide the software necessary to format available selected critical plant condition data for NRC use, provide the necessary hardware from the in-plant computer to interface with the NRC-supplied communication link, provide support for periodic testing of the ERDS, and report any configuration changes to the licensee's ERDS-related hardware and software. Initially, the ERDS will be

tested quarterly, unless otherwise determined by NRC based on demonstrated system performance.

Item 3: Potential change in the risk to the public from the accidental offsite release of radioactive material.

Response: The implementation of the ERDS in all operating nuclear power reactors would provide the NRC with more accurate and timely data to fulfill its major role during an alert or higher emergency. The major role, as defined in the 1987 revision to NUREG-0728, is to monitor the licensee to ensure that appropriate recommendations are being made with respect to offsite protective actions. Currently, the NRC relies on data verbally transmitted through the Emergency Notification System (ENS) during an emergency. Although deemed adequate, this method of transmission has, on occasion, proven to be unreliable. In addition, data collection is time consuming since various instruments are read and their indications logged on a periodic basis for verbal communication via ENS. The implementation of the ERDS would improve the reliability and timeliness of data transmission and help ensure that any reactor unit in distress can be suitably monitored. Therefore, the NRC would be able to make better and more timely assessments of the licensee's actions regarding management of both emergency and protective actions. Although licensees will be required to maintain voice communication via the Emergency Notification System (ENS) with ERDS, the licensee resources that now are required to collect and relay data and information to the NRC will be available to deal with the emergency. The combination of better and more timely assessments of licensee actions by the NRC, and the focusing of licensee resources to better deal with the emergency at hand together will reduce the overall risk to the public health and safety from an emergency.

Item 4: Potential impact on radiological exposure of facility employees.

Response: The implementation of the proposed ERDS rule would have no effect on routine occupational radiological exposure and would not result in increased radiological exposure of facility employees.

Item 5: Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay.

Response: The cost impact of the rule was estimated to be approximately $153,000 for one nuclear power reactor (one unit). This figure, expressed in 1990 dollars, represents the incremental worth of installing and operating ERDS for 30 years using a 5 percent discount rate. The overall industry cost of implementing the rule for 118 nuclear power reactor units was estimated at approximately $18 million. No downtime costs were considered in the cost impact estimates because the installation and operation of the ERDS should have no impact on the operation of a nuclear power plant.

Item 6: The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements.

Response: The proposed ERDS rule should have little or no impact on the operational complexity of the nuclear power reactor units since the required modifications to the hardware and software are minor. The redirection in the labor burden provided by the automatic collection and transmission of selected reactor data would increase the efficiency and effectiveness of nuclear power plant operating personnel during an emergency. The proposed rule is closely associated with Generic Letter 89-15 and complements the ENS that exists at every nuclear power reactor.

Item 7: The estimated resource burden on the NRC associated with the proposed backfit and availability of such resources.

Response: The impact on the NRC resulting from the implementation of the proposed ERDS rule is anticipated to be a one-time cost of about $200,000 for the current population of operational/licensed nuclear reactor units. This figure provides for initial reviews of licensees' implementation plan submittals. After implementation, the NRC cost is estimated to be approximately $4.3 million for 118 nuclear power reactor units. This figure represents the costs for periodic testing and configuration control expressed as the present worth in 1990 dollars and uses a 5 percent discount rate over 30 years.

Item 8: The potential impact of the differences in facility type, design, or age on the relevancy and practicality of the proposed backfit.

Response: The proposed rule is independent of the facility's type, design, or age. There are considerable variations in the instrumentation systems of the nuclear power plants, and the estimated cost impacts were based on an average value for current nuclear power plants to implement the ERDS. There will be no differences, however, in potential impacts between the various facilities on a yearly basis. The proposed rule does not require that licensees monitor more parameters than are presently monitored at each facility.

Item 9: Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

Response: Implementation of the ERDS in accordance with the proposed rule will require that all licensees develop and submit an ERDS implementation plan to the NRC within 60 days of the publication of the final rule in the **Federal Register**. The implementation plan should provide a schedule which identifies the earliest possible time frame for ERDS implementation by the licensee as well as proposed alternate implementation dates. The NRC will establish an industry wide ERDS implementation schedule which will take into account such factors as planned computer modifications and scheduled outages. The ERDS must be implemented within 18 months of the publication of the final rule in the **Federal Register**.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 50.

PART 50 -- DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued

under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), § 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (2 U.S.C. 2201(b)); § 50.7(a), 50.10(a)-(c), 50.34(a) and (e), 50.44(a)-(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (j)(1), (l)-(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)-(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)-(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.72, paragraph (a)(4) is redesignated as paragraph (a)(5) and a new paragraph (a)(4) is added to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

(a) * * *

(4) The licensee shall activate the Emergency Response Data System (ERDS)[5] for any condition that requires the declaration of an emergency class of alert, site area emergency, or general emergency at the time that the NRC Operations Center is notified of the emergency class declaration.

* * * * *

3. Appendix E is amended by adding a new Section VI, Emergency Response Data System, to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

VI. Emergency Response Data System

1. The Emergency Response Data System (ERDS) is a direct real-time electronic data link between the licensee's onsite computer system and the NRC Operations Center which provides for the automated transmission of a limited data set of selected parameters. The ERDS supplements the existing voice transmission over the Emergency Notification System (ENS) by providing the NRC Operations Center with timely and accurate updates of a limited set of parameters from the licensee's installed onsite computer system in the event of an emergency. When selected plant data are not available on the licensee's onsite computer system, retrofitting of data points is not required. The licensee shall test the ERDS periodically to verify system availability and operability. The frequency of ERDS testing will be quarterly unless otherwise set by NRC based on demonstrated system performance.

2. Except for Big Rock Point and all nuclear power facilities that are shut down permanently or indefinitely, onsite hardware and software shall be provided at each unit by the licensee to interface with the NRC receiving system. The hardware and software must have the following characteristics:

a. Data points, if resident in the in-plant computer systems, must be transmitted for four selected types of plant conditions: reactor core and coolant system conditions; reactor containment conditions; radioactivity release rates; and plant meteorological tower data. A separate data feed is required for each reactor unit. While it is recognized that ERDS is not a safety system, it is conceivable that a licensee's ERDS interface could communicate with a safety system. In this case, appropriate isolation devices would be required at these interfaces. The data points, identified in the following parameters will be transmitted: [6]

(i) For pressurized water reactors (PWRs), the selected plant parameters are: (1) Primary coolant system: pressure, temperatures (hot leg, cold leg, and core exit thermocouples), subcooling margin; pressurizer level, reactor coolant charging/makeup flow, reactor vessel level (when available), reactor coolant flow, and reactor power; (2) Secondary coolant system: steam generator levels and pressures, main feedwater flows, and auxiliary and emergency feedwater flows; (3) Safety injection: high- and low-pressure safety injection flows, safety injection flows (Westinghouse), and borated water storage tank level; (4) Containment: pressure, temperatures, hydrogen concentration, and sump levels; (5) Radiation monitoring system: reactor coolant radioactivity, containment radiation level, condenser air removal radiation level, effluent radiation monitors, and process radiation monitor levels; and (6) Meteorological data: wind speed, wind direction, and atmospheric stability.

(ii) For boiling water reactors (BWRs), the selected parameters are: (1) Reactor coolant system: reactor pressure, reactor vessel level, feedwater flow, and reactor power; (2) Safety injection: reactor core isolation cooling flow, high-pressure coolant injection/high-pressure core spray flow, core spray flow, low-pressure coolant injection flow, and condensate storage tank level; (3) Containment: drywell pressure, drywell temperatures, drywell sump levels, hydrogen and oxygen concentrations, suppression pool temperature, and suppression pool level; (4) Radiation monitoring system: reactor coolant radioactivity level, primary containment radiation level, condenser off-gas radiation level, effluent radiation monitor, and process radiation levels; and (5) Meteorological data: wind speed, wind direction, and atmospheric stability.

b. The above selected parameter sets must be transmitted at time intervals not less than 15 seconds or more than 60 seconds.

c. All link control and data transmission must be established in a format compatible with the NRC receiving system.[7]

3. Maintaining Emergency Response Data System

a. Any hardware or software changes that affect the transmitted data points identified in the Emergency Response Data System Data Point Library (data base) must be submitted to the NRC within 30 days after changes are completed.

b. Hardware and software changes, with the exception of data point modifications that could affect the transmission format and computer communication protocol to the ERDS must be provided to the NRC, as soon as practicable, at least 30 days prior to the modification.

4. Implementing Procedures for Emergency Response Data System

a. Each licensee shall develop and submit an ERDS implementation program plan to the NRC by [insert a date 75 days after publication of the final rule]. To ensure compatibility with the guidance provided for the Emergency Response Data System (ERDS), the ERDS implementation program plan must include, but not be limited to, information on the licensee's computer system configuration (i.e., hardware and software), interface, and procedures. Applicants for an operating license must comply with appendix E, section V of this part.

b. Each licensee shall complete implementation of the Emergency Response Data System by [insert a date eighteen months after the effective date of the final rule], or before initial escalation to full power, whichever comes later. Licensees with currently operational ERDS interfaces approved under the voluntary ERDS implementation program[8] will be considered to have met the requirements for ERDS under appendix E, sections VI.1, and 2 of this part.

Dated at Rockville, Maryland, this 2nd day of October, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-23767 Filed 10-5-90; 8:45 am]

BILLING CODE 7590-01-D

[5] Requirements for ERDS are addressed in appendix E.

[6] See 10 CFR 50.55a(h), Protection Systems.

[7] Guidance is provided in NUREG-1394.

[8] See, NUREG-1394.

FEDERAL ELECTION COMMISSION

[Notice 1990-17]

11 CFR Part 110

Domestic Subsidiaries of Foreign Nationals

AGENCY: Federal Election Commission.

ACTION: Announcement of additional public hearing date.

SUMMARY: On August 22, 1990, the Commission published a notice that it was considering amending 11 CFR 110.4(a) by adding a new paragraph 110.4(a)(4)(iii). This proposal would include a domestic subsidiary of a foreign national within the definition of "foreign national" if the foreign ownership of the subsidiary exceeds fifty percent. *See* 55 FR 34280. The notice announced that a public hearing would be held on October 31, 1990 at 10:00 a.m. The Commission has decided to schedule an additional date for further testimony, if necessary, on the issues presented in the rulemaking. As indicated in the August notice, all requests to testify at this hearing must be made in writing as part of the requester's written comments, and must be submitted no later than October 12, 1990.

DATES: The Commission will hold the hearings on October 30, 1990 at 2 p.m., and October 31, 1990 at 10 a.m. Written comments and requests to appear must be submitted no later than October 12, 1990.

ADDRESSES: The hearing will be held at the Federal Election Commission, Ninth Floor Hearing Room, 999 E Street NW., Washington, DC. Written comments, including requests to appear, must be directed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

Dated: October 2, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90-23681 Filed 10-5-90; 8:45 am]

BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-17769; Int'l Series Rel. No. 160; File No. S7-16-90]

RIN 3235-AD66

Books and Records of Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and request for comment.

SUMMARY: The Commission is publishing for public comment a proposed amendment to an existing rule that requires a registered investment company to preserve certain books and records related to its operations. The amendment is being proposed to remove uncertainty regarding the location and language aspects of the recordkeeping requirements for registered investment companies, particularly investment companies investing in foreign securities. The proposed amendment is intended to clarify the recordkeeping requirements for such investment companies.

DATES: Comments must be received on or before December 10, 1990.

ADDRESSES: Send comments in triplicate to: Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-16-90. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Diane C. Blizzard, Special Counsel, (202) 272-2048, or Rochelle G. Kauffman, Senior Attorney, (202) 272-2038, Office of Regulatory Policy, Division of Investment Management ("Division"), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is asking for public comment on a proposed amendment to rule 31a-2 [17 CFR 270.31a-2] under section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Act").

Executive Summary

Section 31(a) of the Act (15 U.S.C. 80a-30(a)) provides that every investment company registered in the United States ("United States investment company" or "investment company") and its investment adviser, broker, dealer, depositor, and underwriter, must maintain and preserve certain books and records for such periods of time as the Commission may prescribe. Section 31(b) of the Act (15 U.S.C. 80a-30(b)) authorizes the Commission to examine all books and records that are required to be maintained and preserved by any person under section 31(a). Section 31(b) also requires any such person to furnish to the Commission, within a reasonable time as the Commission may prescribe, copies of or extracts from books and records that the Commission may by order require. Generally, rule 31a-1 under the Act (17 CFR 270.31a-1) specifies certain books and records that must be maintained, and rule 31a-2 specifies where and for how long these books and records must be preserved.

United States investment companies have increased dramatically their holdings of foreign securities during the past several years.[1] In the course of business, some of the books and records (that are required to be maintained and kept current under rule 31a-1) of these investment companies may originate overseas and may be in a language other than English. However, preserving these books and records outside the United States may undermine section 31(b) by making examination by the Commission's staff difficult, in part because of foreign sovereignty considerations which may limit the Commission's ability to carry out its regulatory functions outside of the United States.[2] In addition, preserving the required records in a language other than English could impede the examination process. Accordingly, the Commission is proposing to amend rule 31a-2 to clarify that the rule requires United States investment companies to preserve specified books and records in a manner that makes them accessible for Commission examination. At the

[1] *See infra* notes 21-29 and accompanying text.

[2] The Commission recognizes that Memoranda of Understanding ("MOUs") with other countries provide an excellent means for assisting in the enforcement of the securities laws in an era when the securities markets are becoming increasingly internationalized. *See, e.g.*, with respect to Brazil, International Series Release No. 7 (July 1, 1988) [43 SEC Docket 206, Mar. 28, 1989]. MOUs are useful in this context because they may facilitate access to books and records that are not required to be preserved in the United States under the rule proposal, and the Commission anticipates negotiating MOUs with other securities regulators and amending existing MOUs where necessary to address issues pertaining to the accessibility of these books and records. Clarification of rule 31a-2, however, is necessary to assure that the books and records required to be maintained under rule 31a-1 are accessible to Commission examiners in the United States in compliance with section 31 of the Act.

same time, the proposed amendment is intended to accommodate the business practices of such investment companies whenever possible, consistent with investor protection and the Commission's responsibilities under the Act.

Proposed paragraph (g)(1) would require expressly a United States investment company to preserve in the United States, for such periods of time as set forth in paragraphs (a)(1) and (a)(2) of rule 31a–2,[3] a set of those books and records required to be maintained and kept current under paragraphs (a) and (b) of rule 31a–1.[4] For the first two years the books and records would be required to be maintained and preserved at an office by a person or persons familiar with the operations of the investment company (and with the books and records in particular) [5] in the manner in which they are kept in the usual course of business.[6]

Proposed paragraph (g)(2) would provide that all books and records created by a United States investment company, that are required to be maintained and kept current under paragraphs (a) and (b) of rule 31a–1, must be preserved in the English language.

The internationalization of the securities markets presents numerous challenges, both for "home country" regulation of domestic enterprises, and for "host country" regulation of foreign issuers selling securities within the host country's borders. This proposal relates solely to home country oversight of United States investment companies.[7] As such, the proposal goes toward fulfilling the reasonable expectation of market participants that each country's regulators are able to enforce effectively their securities laws.[8]

The Commission recognizes the need for flexibility when international markets are involved, and the need to balance its regulatory requirements with the realities of the global marketplace. This proposal is an attempt to permit Commission examiners to conduct adequate examinations of United States investment companies that invest in foreign securities without imposing unnecessary costs on these investment companies. However, the Commission specifically seeks comment on whether the proposed requirements would in any way impeded United States investment companies from participating in foreign markets, now or in the future, and, if so, how. Commenters are also encouraged to suggest alternative approaches that are consistent with the investor protection purposes of the Act. [9] In addition, the Commission specifically invites comment from foreign securities regulators as to what records their respective countries require investment companies organized in that country to maintain, whether such records must be preserved in that country, whether the records must be maintained in a particular language, and if so, what language, and, in general, as to their experience with such recordkeeping issues.[10]

Finally, the release requests comment on whether the Commission should reexamine its recordkeeping requirements for United States investment companies under rule 31a–1.

Background

Section 31(a) of the Act provides that "[e]very registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and preserve for such period or periods as the Commission may prescribe by rules and regulations, such accounts, books, and other documents" that form the basis for financial statements required to be filed under section 30 of the Act. Section 31(a) also provides that—

> [e]very investment adviser not a majority-owned subsidiary of, and every depositor of any registered investment company, and every principal underwriter for any * * * [such] company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such accounts, books, and other documents as are necessary or appropriate to record such person's transactions with such registered company.

Section 31(b) of the Act provides that all accounts, books and records that section 31(a) requires any person to maintain and preserve, "shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe." Section 31(b) also requires any person required to maintain and preserve books and records under section 31(a) to "furnish to the Commission, within such reasonable time as the Commission may prescribe, copies of or extracts from such books and records which may be prepared without undue effort, expense, or delay, as the Commission may by order require."

The legislative history of section 31 notes that the "accounts and accounting of * * * companies is an extremely important matter and lies close to the heart of a great many of the difficulties [that prompted the consideration of legislation to regulate investment companies]." [11] The legislative history further suggests that the purpose of the section was to require the keeping of certain books and records that would be

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[3] *See infra* note 32.

[4] These documents constitute the record forming the basis for financial statements required to be filed under section 30 of the Act (15 U.S.C. 80a–29).

[5] Of course, the person or persons who maintain and preserve the requisite books and records would not be required to store the books and records in their individual offices, and may instead choose to store them in another area (*e.g.*, a file area or conference room) at their place of business. *See infra* text following note 35.

[6] The proposed amendment would not require an investment company to maintain its principal office within the United States or have the books and records located at such principal office. *Id.*

[7] The Commission anticipates that a different regulatory approach would be necessary if the United States were to impose recordkeeping requirements as a host country with respect to sales in the United States of securities of foreign investment companies. *See infra* note 31 regarding section 7(d) of the Act (15 U.S.C. 80a–7(d)).

[8] In its recent adoption of Regulation S regarding offshore offers and sales, the Commission articulated a territorial approach to securities regulation emphasizing the primacy of the laws in which a market is located, recognizing that, as investors choose their markets, they also choose the laws and regulations applicable to such markets. *See* Securities Act Release No. 33–6863 (Apr. 24, 1990) [55 FR 18306, May 2, 1990.]

[9] *See* section 1(b) of the Act [15 U.S.C. 80a–1(b)]. *See also infra* the Background section for a general discussion of the purposes behind section 31 of the Act.

[10] For example, Luxembourg requires all investment companies organized in Luxembourg with Luxembourg as their home country to locate their central administration in Luxembourg. *See* Bourse de Luxembourg (The Investment Fund Law 1988), arts. 3, 59 (1988). From informal contacts with Luxembourg regulators, the Commission staff learned that such companies are limited in maintaining their records to one of the four specified languages that are commonly used in Luxembourg (the English, French, German or Luxembourg language). Similarly, informal contacts with Japanese regulators indicate that Japanese investment trust management companies, although not specifically mandated by law, do as a matter of course maintain their records in Japanese and preserve them in Japan. In addition, the Commission staff has been informed by Irish regulators that, under their regulations, Undertakings for Collective Investment in Transferable Securities (UCITS) that are organized in Ireland must maintain certain records in Ireland. Finally, preliminary research indicates that the United Kingdom requires records of collective investment schemes to be in English, but such records may be in another language provided that the firm operating the collective investment scheme has facilities for producing a translation of the record into English upon request within a reasonable time. *See* Securities and Investments Board (United Kingdom), the Financial Services (Financial Records) Rules 1987, rule 11(3).

[11] *See* Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess. 304 (1940) (Statement of Commissioner Robert E. Healy).

subject to the Commission's inspection at any time.[12]

In 1944, the Commission adopted rules N-31A-1 and N-31A-2 under section 31(a) of the Act, both of which prescribed in general terms the books and records (forming the basis for financial statements to be filed under section 30 of the Act) to be maintained by a registered investment company and other persons, and the periods of time such records must be preserved.[13]

In 1962, following an extensive reevaluation of the recordkeeping requirements under rules 31a-1 and 31a-2,[14] the Commission substantially amended both rules. Rule 31a-1 was amended to required that investment companies, certain of their majority-owned subsidiaries, and certain other persons having transactions with investment companies,[15] maintain and keep current specified books and records, including certain memoranda and documents not previously required. At the same time, the Commission amended rule 31a-2 to require every investment company to preserve all books and records required to be maintained and kept current under paragraphs (a) and (b) of rule 31a-1, for a specified period of time, depending on the document, but with all such documents being preserved for the first two years "in an easily accessible place." In addition, rule 31a-2 was amended to cover the preservation of books and records that are maintained and kept current by certain majority-owned subsidiaries of investment companies and other persons, under rule 31a-1.[16]

The Commission adopted the 1962 amendments after concluding, based on experience gained in the administration and enforcement of the Act (including experience derived from staff inspections of investment companies and certain affiliated persons), that both rules 31a-1 and 31a-2 as initially adopted lacked "sufficient specificity and detail."[17] The amendments were adopted after a series of meetings between the Commission staff and representatives of the investment company industry and accounting professions, including visits by the Commission staff to several United States investment companies and investment advisers to study their recordkeeping procedures.[18]

Since 1962, the Commission has twice amended paragraph (f) of rule 31a-2 to permit certain books and records to be maintained and preserved on photographic film or on magnetic tape, disk, or other computer storage medium. In 1973, the Commission amended the paragraph to permit these books and records to be maintained and preserved on microfilm.[19] In 1986, the Commission enlarged the range of acceptable storage media to include a computer storage medium.[20]

Commission examiners inspect the books and records of hundreds of United States investment companies every year. Typically, such examinations occur, either on a surprise basis or with little advance notice, at the investment company's principal office in the United States. Because the investment company usually maintains and preserves most of its books and records at that office, Commission examiners have ready access to most information needed to conduct an adequate inspection.

Until recently, the great majority of United States investment companies' portfolios consisted almost exclusively of domestic securities and their operations were located in the United States. Therefore, such investment companies, as a matter of course, preserved their books and records in the English language in the United States. Accordingly, questions have rarely arisen regarding the requirement of rule 31a-2 that an investment company preserve the books and records for the first two years "in an easily accessible place."

In the past decade, however, United States investors have increased dramatically their participation in foreign securities markets. A significant portion of this increase can be attributed to the growth in the number and assets of United States investment companies, both open-end ("mutual funds" or "funds") and closed-end ("closed-end funds"), that invest in foreign securities.[21] A year-end 1989 compilation revealed that approximately 200 registered mutual funds, with assets totalling over $29 billion, invested in foreign securities.[22] Specifically, the report found that 36 global funds,[23] 14 global flexible portfolio funds,[24] 39 world income funds,[25] and 76 international funds[26] were engaged in

[12] *See id. See also* S. Rep. No. 1775, 76th Cong., 3d Sess. 18 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess. 24 (1940).

[13] Specifically, rule N-31A-1 prescribed the period of time for which every investment company, and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of the investment company, must preserve the books and records that form the basis for financial statements required to be filed under section 30 of the Act. Rule N-31A-2 prescribed the periods of time for which every investment adviser that is not a majority-owned subsidiary of an investment company, every depositor of any investment company, and every principal underwriter for any investment company other than a closed-end investment company, must preserve books and records that are necessary and appropriate to record its transactions with an investment company. *See* Investment Company Act Release No. 645 (Apr. 17, 1944) [9 FR 4170, Apr. 20, 1944] (adopting rules N-31A-1 and N-31A-2).

[14] The Commission had previously dropped the letter "N" as a prefix to rules adopted under the Act.

[15] Rule 31a-1, as amended, governs those persons covered by rule N-31A-2. *See supra* note 13.

[16] The Commission at that time also adopted rule 31a-3 under the Act [17 CFR 270.31a-3], which sets forth certain requirements where the books and records required to be maintained and preserved pursuant to the provisions of rule 31a-1 and 31a-2 are prepared or maintained by others on behalf of the person required to maintain and preserve them. *See* Investment Company Act Release No. 3578 (Nov. 28, 1962) [27 FR 11993, Dec. 5, 1962] (adopting amendments to rules 31a-1 and 31a-2 and new rule 31a-3).

[17] *See id.*

[18] As will be discussed later, the Commission is once again considering whether to reexamine generally the recordkeeping requirements under the Act, and comment is requested on this issue. *See infra* section C of the Discussion.

[19] The 1962 amendments had required that the books and records be maintained and preserved in hard copy, although microfilm could be substituted for the hard copy after a period of three years following the creation of the hard copy record. *See* Investment Company Act Release No. 7724 (Mar. 16, 1973) [38 FR 7796, Mar. 26, 1973] (adopting amendment to paragraph (f) of rule 31a-2).

[20] *See* Investment Company Act Release No. 15410 (Nov. 13, 1986) [51 FR 42207, Nov. 24, 1986] (adopting amendment to paragraph (f) of rule 31a-2).

[21] *See* Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Comm. on Banking, Housing and Urban Affairs and the House Comm. on Energy and Commerce, Internationalization of the Securities Markets, II-2-3, VI-1 (July 27, 1987). *See also* Report of the Office of Economic Analysis to the Commission, The Securities Markets in the 1980s: A Global Perspective, 69 (January 26, 1989) ("OEA Report").

[22] *See* Lipper-Directors' Analytical Data, Vol. 1, Tables I, VII, VIII, X, XXVII, Lipper Analytical Securities Inc. (First Edition, 1990) ("Lipper").

[23] Lipper defines a "global fund" as a fund that invests at least 25% of its portfolio in securities traded outside of the United States and may own United States securities as well. *See id.* at Key (Equity Funds). Lipper noted that the global funds represented 1.32% of all mutual funds, with assets totalling $12,947.1 million as of December 31, 1989.

[24] Lipper defines a "global flexible portfolio fund" as a fund that is managed to achieve high total return by allocating its investments across various asset classes, including both domestic and foreign stocks, bonds and money market instruments. At least 25 percent of its portfolio is invested in securities traded outside of the United States. *See id.* Lipper determined that global flexibility portfolio funds represented approximately .23% of all mutual funds, with assets totalling $2,244.6 million as of December 31, 1989.

[25] Lipper defines a "world income fund" as a fund that invests its portfolio primarily in both United States dollar and non-United States dollar debt instruments. The fund also may invest in common and preferred stocks. *See id.* at Key (Fixed Income Funds). Lipper determined that these funds represented .36% of all mutual funds, with assets totalling $3,549.3 million as of December 31, 1989.

[26] Lipper defines an "international fund" as a fund that invests its assets in securities whose primary trading markets are outside of the United

Continued

foreign investment as of December 31, 1989.[27] In addition, as of December 31, 1989, approximately 37 closed-end funds were participating actively in foreign markets,[28] with many of them investing in the securities of a single country ("single country funds").[29]

As more United States investment companies invest in foreign securities, the location and form of such investment companies' books and records may become more variable. Maintenance of a United States investment company's books and records outside of the United States makes a review of such records more difficult because of foreign sovereignty considerations, and increased cost to the Commission of sending its examiners on international travel.[30] The practice thus raises questions of compliance with section 31(b) and rule 31a-2.[31]

States. *See id.* at Key (Equity Funds). Lipper noted that international funds represented 1.04% of all mutual funds, with assets totalling approximately $10,331.2 million as of December 31, 1989.

[27] In addition, Lipper determined that 36 gold oriented funds with assets totalling $4,184.0 million, were active as of December 31, 1989. Lipper defines a gold oriented fund as a fund which has at least 65% of its equity portfolio in shares of gold producers, gold oriented mining finance houses, gold coins, or bullion. *See id.* Many gold oriented funds may be considered to be investing in foreign securities because most gold is mined outside the United States.

[28] *See* Lipper Annuity & Closed-End Survey, pp. 3-12, Lipper Analytical Securities Inc. (Jan. 31, 1990).

[29] The OEA Report, *supra* note 21, commented that single country funds are a relatively new investment vehicle, with only two being listed on United States exchanges prior to 1983. However, the OEA Report stated that as of the end of 1988, approximately 15 registered single country funds were listed on United States exchanges. *See id.* at 90.

[30] In one instance, the Division staff denied, and later provided no-action relief to a stock life insurance company and its investment company affiliates, each of whom wanted to maintain its books and records in Toronto, Canada. The staff took the no-action position only after receiving written assurances from the Ontario Securities Commission and the Canada Employment and Immigration Commission that Commission personnel could enter Canada to conduct inspections of the books and records and an undertaking by the insurance company's parent and the investment company's adviser to provide the Commission at its Washington, D.C. office or at any of its regional offices with copies of such books and records. *See* Manufacturers Life Insurance Company of America (pub. avail. Oct. 10, 1985) (denying the original request); Manufacturers Life Insurance Company (pub. avail. Mar. 17, 1986) (providing no-action relief to the insurance company, the investment company and Separate Account One); Manufacturers Life Insurance Company (pub. avail. Dec. 5, 1988) (providing no-action relief to the insurance company and Separate Accounts Two, Three and Four).

[31] There is an analogous provision in the Act, section 7(d), that illustrates the policy that registration must be accompanied by effective inspection. That section prohibits a foreign investment company from offering or selling securities in the United States unless the Commission issues an order based, in part, on a finding that it is both legally and practically able to enforce the provisions of the Act. All of the foreign investment companies that have received orders under section 7(d) represented that they would comply substantially with the substantive provisions of rule 7d-1 [17 CFR 270.7d-1], which includes a requirement that the foreign investment company maintain original or duplicate copies of its books and records at the office of its custodian (or other office) located within the United States. Although rule 7d-1 pertains only to Canadian investment companies, it has been used more generally as a model of the minimum requirements for granting an order under section 7(d) permitting registration. *See, e.g.*, Pan Australian Fund Ltd., Investment Company Act Release Nos. 7795 (Apr. 30, 1973) [38 FR 11141, May 4, 1973] (notice of application) and 8028 (Oct. 10, 1973) (order). *But see* Great-West Variable Annuity Account A, Investment Company Act Release Nos. 5488 (Sept. 5, 1968) [33 FR 12870, Sept. 11, 1968] (notice of application) and 5505 (Oct. 2, 1968) (order) (A condition of the order requires a stock life insurance company merely to furnish copies of the separate account's books and records to the Commission, upon request, in the United States, and to give Commission examiners free access to such books and records at the investment company's principal office in Canada.).

Discussion

In order to clarify the proper location and form of the books and records that are required to be maintained by a United States investment company under rule 31a-1, the Commission is proposing to amend rule 31a-2 by adding paragraph (g) to the rule.

A. Books and Records Must Be Preserved at an Office in the United States

Proposed paragraphs (g)(1) of rule 31a-2 would provide that, pursuant to paragraphs (a)(1) and (a)(2),[32] any United States investment company must preserve a set of its books and records, required to be maintained and kept current pursuant to paragraphs (a) and (b) of rule 31a-1,[33] in the United States.

[32] Paragraph (a)(1) of rule 31a-2 requires an investment company to preserve permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs 1 through 4 of rule 31a-1(b). These books and records include the general ledger and supporting journals forming the basis of the investment company's computation of net asset value and corporate records such as the articles of incorporation and minute books.

Paragraph (a)(2) of rule 31a-2 requires an investment company to preserve for a period not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, certain books and records required to be maintained under rule 31a-1(a) and all books and records required to be made under paragraphs 5 through 12 of rule 31a-1(b). These books and records consist mostly of supporting records which provide back-up documentation for the financial statements.

[33] The proposed amendment to rule 31a-2 would govern only those books and records that are required to be maintained and kept current by an investment company under paragraphs (a) and (b) of rule 31a-1. The recordkeeping requirements for other entities that are set forth in rule 31a-2 are unaffected.

The Commission understands that currently virtually all United States investment companies that invest in foreign securities do preserve their books and records in the United States, as contemplated by section 31(b) and rule 31a-2. Accordingly, this aspect of proposed paragraph (g)(1) reflects present industry practice.

Proposed paragraph (g)(1) would require further that the United States investment company preserve these books and records, for the first two years, at an office [34] where a person or persons familiar with the operations of the investment company (and the books and records in particular) would maintain and keep current such books and records in the manner in which they are kept in the usual course of business.[35] Mere storage of the books and records in an off-site storage facility would not be enough to satisfy the proposed requirement. A United States investment company would not need to maintain its principal office within the United States or have the books and records located at its principal office. Rather, a United States investment company may preserve the required books and records, for example, with a transfer agent or administrator that is located in the United States.

In addition to being kept at an office, the prescribed books and records would be required to be arranged and maintained in the manner in which they are kept in the usual course of business. In order to meet this requirement, the books and records should be organized in a way that reasonably reflects a replication of the company's recordkeeping system. This aspect of the proposal is intended to avoid Commission examiners having to reconstruct the books and records

[34] the proposed amendment would not require the investment company to preserve the required books and records at a single office. Some investment companies currently preserve their books and records at more than one location in the usual course of business, *e.g.*, certain related records at the offices of their transfer agent and the remainder at their principal office. The proposal is intended to codify current industry practice. Of course, scattering books and records among several office sites in a manner which would effectively impede the inspection process would not be consistent with the purposes of proposed paragraph (g)(1).

[35] *Cf.* Federal Rules of Civil Procedure § 34(b), which requires any party who produces documents for purposes of discovery to produce the requested documents as "they are kept in the usual course of business * * *." The purpose of this aspect of rule 34(b) of the civil procedure rules is to prevent parties from mixing critical documents with others in the hope of obscuring their significance. *See* Advisory Committee Note to Amended Rule 34(b), reprinted in 4A Moore & Lucas, Moore's Federal Practice 34-11 (2d ed. 1990).

before an inspection could be conducted.

The Commission is not aware of any difficulties experienced by United States investment companies investing in foreign securities in keeping their books and records "current" as required under paragraphs (a) and (b) of rule 31a–1.[36] Under the proposed amendment to rule 31a–2, the "usual course of business" standard would apply both to how the records are arranged and how they are kept current. However, comment is requested whether this standard is sufficient or whether the rule should attempt to specify time frames for the different types of records.

Finally, while proposed paragraph (g)(1) would require that the books and records be preserved in the United States for such periods of time as prescribed in paragraphs (a)(1) and (a)(2) of rule 31a–2, such books and records need only be kept at an office in the prescribed manner for the first two years.[37]

Proposed paragraph (g)(1) does not require a United States investment company to preserve its original books and records in the United States, merely a "set of its books and records."[38] The Commission understands that most United States investment companies that invest in foreign securities use a facsimile machine or computer medium to send records to the United States. Duplicate records derived in this fashion would be acceptable for purposes of the proposal.[39] Similarly, copies produced by the same impression as the original (*e.g.*, carbon) or by means of photography (*e.g.*, photocopies) are also acceptable.

Proposed paragraph (g)(1) is intended to enable Commission examiners to inspect the books and records that are required to be maintained and kept current under paragraphs (a) and (b) of rule 31a–1. Minimizing difficulties and delays during the examination process is necessary to maintaining an effective and efficient examination program, benefiting both United States investment companies and the Commission.[40] By clarifying that a set of the required books and records must be preserved in the United States, the proposal would allow most of the information generally reviewed during the course of an inspection to be readily available to Commission examiners. In addition, as previously noted, by requiring that the books and records be arranged and maintained in the manner in which they are kept "in the usual course of business," Commission examiners would be able to inspect the records as quickly as possible without undue difficulty or delay. Finally, the proposal would eliminate any potential foreign sovereignty considerations that could arise if Commission personnel sought to enter the foreign countries where records were preserved in order to conduct examinations.

B. Certain Books and Records Must Be Preserved in the English Language

Proposed paragraph (g)(2) would clarify that all books and records created by a United States investment company, that are required to be maintained and kept current under paragraphs (a) and (b) of rule 31a–1, must be preserved in the English language. Such books and records would include, for example, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, minute books, and journals reflecting itemized daily records of all purchases and sales of securities.[41] Documents not created by the United States investment company, such as files of advisory material received from the investment adviser, would not be required to be preserved in the English language.[42] In addition, documents created by the United States investment company, but which are not listed in paragraphs (a) and (b) of rule 31a–1, such as sales literature, most internal memoranda,[43] and general correspondence, need not be preserved in the English language.[44]

The English language requirement of proposed paragraph (g)(2) would mean that the requisite books and records must be preserved in the words and figures of the English language.[45] Thus, the proposal would require the use of Arabic numerals. Of course, proper names, foreign currency names, and other information easily understandable to a person who speaks only English need not be preserved in the English language.

The Commission understands that United States investment companies that invest in foreign securities typically do preserve the required books and records in the English language. However, compliance with the proposed English language requirement is not intended to be burdensome for those United States investment companies that would not preserve the required books and records in the English language as a matter of course. Such investment companies could comply with this aspect of the proposal using a variety of methods, depending on the document. For example, most of the documents required to be maintained and preserved under paragraphs (a) and (b) of rule 31a–1 are columnar in nature. United States investment companies could comply with the proposed English language requirement for these types of documents merely by including English language subheadings within the document. Alternatively, a template in the English language could be made part of the record that, when superimposed over the document, creates an English language original (where, of course, the document contains Arabic numerals).

United States investment companies may also comply with the proposed English language requirement through contemporaneous translations. English translations prepared as a matter of course and as soon as practicable would be regarded as being contemporaneous.

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[36] What would be considered "kept current" for purposes of rule 31a–1 would depend on the document. For example, paragraph (b)(9) of rule 31a–1 requires a record for each fiscal quarter, to be completed within 10 days after the end of such quarter, showing the basis for brokerage allocations made during that quarter. On the other hand, because of its more critical nature, all ledgers forming the basis for the daily computation of net asset value must be updated daily under rule 2a–4 under the Act [17 CFR 270.2a–4]. The proposed amendment clarifies that United States investment companies that invest in foreign securities are required to comply with these requirements by updating books and records preserved in the United States. Of course, if books and records are updated in the usual course of business with information transmitted from foreign countries, any incidental time delays would not, in and of themselves, jeopardize compliance with the Act.

[37] *See supra* note 32. The time periods range from "permanently" to "not less than 6 years" but in all cases, "the first two years in an easily accessible place."

[38] *Accord* rule 7d–1(b)(8)(iii) under the Act, discussed *supra* note 31.

[39] Of course, such books and records may be maintained and preserved on magnetic tape, disk, or other computer storage medium in accordance with paragraph (f) of rule 31a–2.

[40] Minimizing delays in the inspection process also is important in light of the Division's policy that inspections of investment companies may be conducted on a surprise basis or with little notice.

[41] *See, e.g.*, paragraphs (b)(1), (b)(2), and (b)(4) of rule 31a–1.

[42] *See, e.g.*, paragraph (b)(11) of rule 31a–1. On the other hand, records prepared by persons other than the investment company but on behalf of the investment company, in accordance with rule 31a–3 under the Act, would be required to be preserved in the English language. *See supra* note 16.

[43] *But see* paragraph (b)(1) of rule 31a–1.

[44] *But see* rule 6b–12 under the Act [17 CFR 270.6b–12], which requires registration statements and reports to be in the English language.

[45] *See also* 12 CFR 346.18 (requiring each United States branch of a foreign bank that is insured by the Federal Deposit Insurance Corporation to keep a set of its records and accounts in the "words and figures of the English language which accurately reflect the business transactions of the branch on a daily basis").

Thus, for example, minutes of directors meetings may be first prepared in the language that was spoken at the meeting and then, shortly thereafter, translated into the English language.

Documents maintained in a language other than English and not contemporaneously translated into the English language would not satisfy this requirement.[46] The Commission is concerned that allowing United States investment companies to translate a document into the English language at a significantly later date than when the non-English version was first prepared may not provide for an adequate inspection due, in part, to the potential for delay in obtaining the translations during the course of an inspection.[47] In addition, proposed paragraph (g)(2) is intended to enable Commission examiners to conduct inspections without any dependency on the availability or cost to the Commission of obtaining a translator. Finally, this aspect of the proposal is also intended to reduce possible mistakes in translation and to remove the potential for altering records that could arise if the books and records are not preserved in the English language and are only translated by the investment company at the Commission's request at the time of examination. Comment is requested, however, on whether United States investment companies should be permitted to provide translations upon request by the Commission and, if so, how the Commission's concerns discussed above with respect to delays and the potential for altering records could be alleviated.

Inspection of the books and records that are required to be maintained by United States investment companies under rule 31a–1 would, of course, be easier if all of the required books and records were preserved in the English language. However, such a requirement may restrict unnecessarily the business practices of United States investment companies that invest in foreign securities, and accordingly is not being proposed. The proposed requirement that only the books and records created by the investment company be preserved in the English language represents a balancing and is intended to permit Commission examiners to conduct adequate examinations of United States investment companies without imposing unnecessary costs on these investment companies.[48] As earlier noted, most of the books and records that would be subject to the English language requirement are numerical and columnar in nature and therefore more easily preserved in English. However, comment is requested on whether certain documents that the investment company creates should be exempted from the English language requirement, and, if so, how the Commission staff could examine such documents. In responding to the request for comment, commenters should specifically list the types of documents that should be exempted from the English language requirement.

Comment is also requested on whether the proposed English language requirement would place undue burdens on United States investment companies, and, if so, whether there are reasonable alternatives to the English language requirement that would not compromise the investor protection purposes of the Act, as promoted by the Commission's inspection and enforcement program. For example, should the rule specify a limited number of other languages in addition to English that would be permissible and, if so, what should those languages be? In responding to the language question, commenters are requested to address with specificity the possible need the United States investment companies that invest in foreign securities to keep books and records in languages other than English, and how the Commission staff would readily conduct timely examinations of such investment companies consistent with the Commission's resources.

C. Request for Comment on Need for Reexamination of Recordkeeping Requirements Under Rule 31a–1

The dramatic increase in the number of United States investment companies participating in foreign securities markets has also raised questions as to whether the categories of books and records required to be maintained and kept current under rule 31a–1 should be reevaluated. As mentioned previously, in 1962, the Commission amended rule 31a–1 to specify in detail the types of books and records required to be maintained. The amendment was adopted after members of the Commission staff held meetings with members of the investment company industry and accounting profession to discuss appropriate recordkeeping requirements.[49] Due to the cooperative nature of this effort, relatively few objections were raised as to the specific types of records included in the recordkeeping requirements.[50]

One way to accommodate United States investment companies with foreign portfolios may be to require them to maintain and keep current fewer categories of documents than are currently listed in rule 31a–1, provided that narrowing the scope of the recordkeeping requirements for these investment companies would not jeopardize investor protection or the ability of the Commission's staff to conduct an effective inspection. Comment is specifically requested as to whether the Commission should reexamine its recordkeeping requirements under rule 31a–1 for United States investment companies that participate in foreign markets. In addition, commenters are invited to comment whether there is a need to reexamine generally the recordkeeping requirements under the Act for all United States investment companies, whether or not they hold foreign securities in their portfolios. With respect to these requests for comments, commenters should specifically list what records should be eliminated from the recordkeeping requirements and why eliminating these records would not compromise investor protection. Finally, commenters should also consider whether there are records that should be required to be kept by United States investment companies, either in general or only by those participating in foreign markets, under rule 31a–1 that are currently not part of the recordkeeping requirements.

Cost/Benefit of Proposed Action

The proposed amendment to rule 31a–2 would better enable the Commission to fulfill its inspection and enforcement duties under the Act. The proposed amendment also would benefit both investment companies and the Commission by minimizing possible difficulties and delays of Commission examinations.

The Commission anticipates that for most investment companies any

[46] *But see supra* note 10 (United Kingdom's requirement that records may be kept in a language other than English provided that the firm be able to translate the records into English upon request within a reasonable time).

[47] *See supra* note 40.

[48] The books and records that would be subject to the proposed English language requirement are effectively a subset of those books and records that would be required to be maintained and preserved in the United States under the proposal. Documents not created by the investment company, but required to be maintained and preserved in the United States in the manner set forth in proposed paragraph (g)(1), would still be important to review during an examination to determine the company's compliance with regulatory requirements and its disclosures to investors.

[49] *See supra* note 18 and accompanying text.

[50] At that time, two areas identified as potentially burdensome were records of transactions with broker-dealers and records documenting and authorizing portfolio decisions.

increased costs of compliance with proposed amended rule 31a-2 would be minimal because the proposed amendment essentially would codify industry practice. The Commission recognizes that the proposed amendment may be more costly for very small investment companies that seek to invest in foreign markets. However, the Commission understands that as the popularity of Foreign investment has increased, the costs of setting up a system to transport relevant information to the United States have decreased dramatically. In addition, any increased compliance costs would be outweighed by the benefits of the proposed amendment. Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed amendment to rule 31a-2. commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence available.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendment to rule 31a-2. The Analysis explains that the proposed amendment is intended to clarify the recordkeeping requirements for United States investment companies, including investment companies that invest in foreign securities. It states that in the course of business, some of the books and records of United States investment companies (that are required to be maintained and kept current under rule 31a-1) may originate overseas and may be in a language other than English. The Analysis explains that preserving books and records outside the United States may undermine section 31 of the Act by making examination by Commission staff difficult. In addition, preserving records in a language other than English could also impede the examination process. The Analysis also states that any increased costs of compliance with rule 31a-2, as amended, would be minimal because the proposal essentially would codify current industry practice. The Analysis notes that the proposal may be more costly for very small investment companies that seek to invest in foreign markets. However, the Analysis concludes that such costs would be greatly outweighed by the benefits of the proposed amendment. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Rochelle G. Kauffman, Esq., Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendment

For the reasons set out in the preamble, part 270 of chapter II of title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a-37, 80c-89; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 *e seq.*; unless otherwise noted; * * * Section 270.31a-2 is also issued under sec. 31 (15 U.S.C. 80a-30).

§ 270.31a-Z [Amended]

2. The authority citation following § 270.31a-2 is removed.

3. § 270.31a-2 is amended by adding paragraph (g) to read as follows:

§ 270.31a-2. Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

* * * * *

(g) Pursuant to the requirements of paragraphs (a)(1) and (a)(2) of this section, any registered investment company shall, (1) Preserve a set of its books and records required to be maintained and kept current pursuant to paragraphs (a) and (b) of § 270.31a-1 in the United States, the first 2 years at an office where a person or persons familiar with the operations of the investment company (and the books and records in particular) maintains and keeps current such books and records in the manner in which they are kept in the usual course of business; and (2) Preserve in the English language all books and records created by the investment company that are required to be maintained and kept current pursuant to paragraphs (a) and (b) of § 270.31a-1.

By the Commission.

Dated: October 1, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23699 Filed 10-5-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N-0165]

RIN 0905-AD08

Food Labeling; Serving Sizes; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule to amend its nutrition labeling regulations that published in the **Federal Register** of July 19, 1990, (55 FR 29517), that: (1) Defined serving and portion size on the basis of the amount of food commonly consumed per eating occasion; (2) required the use of both U.S. and metric measures to declare serving size; (3) permitted the declaration of serving (portion size in familiar household measures; (4) permitted the optional declaration of nutrient content per 100 grams (or 100 milliliters); and (5) defined a "single serving container" as that which contains 150 percent or less of the standard serving size for the food product. In this document, FDA also proposed to establish 159 food product categories to assure reasonable and uniform serving sizes upon which consumers can make nutrition comparisons among food products.

FOR FURTHER INFORMATION CONTACT: Youngmee K. Park, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0089.

In FR Doc. 90-16729, appearing at page 29517 of the **Federal Register** of Thursday, July 19, 1990, the following corrections are made:

1. On page 29530, at the bottom of Table 2 under "Cereals and other grain products:" the third entry for "Breakfast cereals, ready to eat (weigh > 1 oz but < 2 oz per cup)" and the fourth entry for "Breakfast cereals, ready to eat (weigh > 2 but < 3 oz per cup)" are corrected to read "Breakfast cereals, ready to eat (weigh > 1 oz but < 2 oz per cup)" and "Breakfast cereals, ready to eat (weigh > 2 but < 3 oz per cup)", respectively.

2. On page 29531, the first entry appearing under the heading "Product category" "Breakfast cereals, ready to eat (weigh > 3 oz per cup)" is corrected to read "Breakfast cereals, ready to eat

(weigh > 3 oz per cup)". On the same page, the last entry under the heading "Product category" "All other fruits, fresh, weighing < 50 percent but > 150 percent of the standard serving size per piece" is corrected to read "All other fruits, fresh, weighing > 50 percent but ≤ 150 percent of the standard serving size per piece".

3. On page 29532, in the first entry appearing under the heading "Product category" "All other fruits, fresh, weighing < 50 percent of the standard serving size per piece is corrected to read "All other fruits, fresh, weighing < 50 percent of the standard serving size per piece". On the same page, appearing under the heading "Product category" for "Meal type trays: [6]", the entries "Cracker and cheese trays" through "Sandwich and soup" should be indented two spaces under "Lunch or dinner trays". The "5 oz" appearing under the "Standard serving size [2]" column for "Lunch or dinner trays" should be removed and "5 oz" should be placed in the "Standard serving size [2]" column for "Cracker and cheese trays".

Dated: October 1, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-23742 Filed 10-5-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revision to the Requirement for a Nonavailability Statement to Include Selected Outpatient Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the CHAMPUS program to require the issuance of a nonavailability statement for selected outpatient procedures determined by the Assistant Secretary of Defense (Health Affairs). Currently, as a condition for reliance on CHAMPUS for primary payment, a nonavailability statement (DD Form 1251) is required for nonemergency inpatient care provided at civilian facilities to CHAMPUS beneficiaries who reside within the inpatient catchment areas of military medical treatment facilities (MTFs). The purpose of the nonavailability statement policy is to encourage maximum cost-effective use of MTFs.

DATES: Written public comments must be received on or before November 8, 1990.

ADDRESSES: Comments should be sent to Office of the Assistant Secretary of Defense (Health Affairs); Attention: Mrs. Marcia Bonifas, Room 1B657, The Pentagon; Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Bonifas, (703) 695-3331.

SUPPLEMENTARY INFORMATION:

I. Background

In FY 89, CHAMPUS costs were up approximately 15 percent over FY 88, $200 million more than planned. In response, the Assistant Secretary of Defense (Health Affairs) directed several new cost containment initiatives as part of a CHAMPUS Management Improvement Program (CMIP). Part of the CMIP is the implementation of the requirement for the issuance of a nonavailability statement (NAS) for selected outpatient procedures determined by the Assistant Secretary of Defense (Health Affairs). Currently, as stated in paragraph 199.4(a)(9)(i)(B), a nonavailability statement (DD Form 1251) is required only for nonemergency inpatient care provided at civilian facilities to CHAMPUS beneficiaries who reside within the inpatient catchment areas (usually a 40 mile radius) of military medical treatment facilities (MTF) when CHAMPUS is intended as the primary payer.

Fast-moving trends over the past several years highlight the appropriateness of expanding NAS requirements to selected outpatient procedures. Throughout the United States, many medical procedures previously provided only on an inpatient basis are being routinely handled on an outpatient basis. This has reduced inpatient costs, but significantly increased costs in many outpatient settings. In response, managed care programs in the civilian sector now typically require precertification or other review of ambulatory surgery and other selected procedures. It is anticipated that these trends of more and more services shifting from an inpatient to an outpatient setting will continue, as will health care management efforts to maximize cost efficiencies concerning outpatient services.

II. Proposal

It is in the nature of catching up with these general trends that we propose to have our NAS requirements follow selected procedures out of their inpatient hospital setting and into their current outpatient hospital setting and into their current outpatient settings. Thus, under the proposed rule, we would expand the nonavailability statement requirement to selected outpatient procedures, with the principal focus on high cost procedures for which a shift in location of care from the civilian community to the military facility would appear to be more economical. The proposed rule is pursuant to our authority under 10 U.S.C. 1079, 1080 and 1086(e).

Under the proposed rule, we would not require nonavailability statements for all outpatient services; rather, we foresee the requirement pertaining to relatively few procedures. The proposed rule identifies two categories of procedures which would set the parameters for the particular outpatient procedures for which nonavailability statements will be required. The two categories are: (1) outpatient surgery procedures and (2) other selected outpatient procedures which have high unit costs and for which care may be available in military treatment facilities generally. The requirement for a NAS for selected outpatient services will be effective on 1 July 1991 for services received on or after that date. The list of selected outpatient procedures requiring an NAS will be published in the **Federal Register** and any changes will be published in the **Federal Register** at least 30 days prior to the effective date of the change. This will allow us to make necessary adjustments within the established parameters as we gain experience with the program.

In developing this program, we are very mindful of the need to minimize administrative hassles and avoid unnecessary paperwork. Therefore, we intend to keep the number of procedures covered relatively few. Also, the requirement only applies with respect to beneficiaries who reside in military hospital catchment areas; it will not apply with respect to free-standing military clinics which do not have any inpatient capability. Such clinics are much less likely to be able to handle the types of outpatient procedures targeted by this proposed rule. Further, the list of procedures will be uniform for all beneficiaries in all catchment areas. This will avoid the confusion that would occur if the procedures covered varied by catchment area or by military service. It is the intent of the Department to later transition to a system of catchment area specific lists of procedures.

In addition, issuance of a NAS for an outpatient procedure will be conducted

in the same manner as is currently performed for the issuance of a NAS for nonemergency inpatient care. These procedures are specified in DoD Instruction 6015.19, "Issuance of Nonavailability Statements (NAS)".

We are also aware of the need to assure that beneficiaries understand the procedures involved. Everyday common usage descriptions which are easily recognizable and distinct will be provided along with the appropriate medical terminology.

With respect to regulatory procedures, the proposed rule is not a major rule within the scope of Executive Order 12291. In addition, we certify that the rule will not have a significant impact on small entities within the scope of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Military personnel.

For the reasons set forth in the preamble, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1080, 1086, 5 U.S.C. 301.

2. Section 199.4 is proposed to be amended by adding new paragraph (a)(9)(i)(C) before the "Note" to read as follows:

§ 199.4 Basic program benefits.

(a) * * *

(9) * * *

(i) * * *

(C) An NAS is also required for selected outpatient procedures if such services are not available at a facility of the Uniformed Services (excluding facilities which are exclusively outpatient clinics) located within a 40-mile radius (catchment area) of the residence of the beneficiary. This does not apply to emergency services or for services for which another insurance plan or program provides the beneficiary primary coverage. Any changes to the selected outpatient procedures will be published in the **Federal Register** at least 30 days before the effective date of the change by the ASD(HA) and will be limited to the following categories: outpatient surgery and other selected outpatient procedures which have high unit costs and for which care may be available in military treatment facilities generally. The selected outpatient procedures will be uniform for all CHAMPUS beneficiaries.

* * * * *

Dated: October 2, 1990.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23684 Filed 10-5-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 90-14]

Marine Event; Lake Union, Seattle, Washington

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish an area of controlled navigation upon the waters of Lake Union, Seattle, Washington, during the Fratelli's Fireworks Display which is held annually on every July 4th from 9:30 p.m. p.d.t. until 11:00 p.m. p.d.t. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event by establishing a 680 yard by 680 yard exclusionary area around the fireworks display barge.

DATES: Comments must be received on or before November 23, 1990.

ADDRESSES: Comments and other materials referenced in this notice will be available for inspection and copying at USCG Group Seattle, 1519 Alaskan Way South, Seattle, Washington 98134. Normal Office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D.A. Kearns, Assistant Operations Officer, Coast Guard Group Seattle, Tel: 206-286-5412.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 90-14) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG D.A. Kearns, project officer, and LT D.K. Schram, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Proposed Regulations

The Fratelli's Fireworks Display is held annually as part of the celebration for the Fourth of July Independence Day in Seattle, Washington. This event is sponsored by Fratelli's Ice Cream Company in cooperation with the city of Seattle. The fireworks display is conducted from a barge located on the waters of Lake Union, Seattle, Washington. This one day event attracts a large number of spectators gathered on the waters near the fireworks display. To promote the safety of both the spectators and participants, this proposed permanent regulation is required to keep spectators away from the explosive fireworks barge during the fireworks display. The exclusionary area is designed to keep all spectators at least 340 yards away from the fireworks barge.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it appears that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, comments regarding possible impact this proposed rule may have on federalism concerns are requested. This assessment may be changed in light of comments received.

Environmental Assessment

The proposed rule affects only a small portion of Lake Union during the annual fireworks display and appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impact this proposed change may have on the human environment or potential inconsistencies with any Federal, state, or local law or administrative determination relating to the environment are solicited. A final determination regarding the possible need for an environmental assessment will be made after receipt of written comments.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, as it affects a small section of Lake Union and will be in effect for less than three hours during the Fourth of July Independence Day national holiday. A full regulatory evaluation is unnecessary. The permanent regulation will provide improved public notice of the event and promote safety. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine event, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Section 100.1306 is added to read as follows:

§ 100.1306 Fratelli's fireworks display

(a) *Regulated area:* By this regulation, the Coast Guard will restrict general navigation and anchorage, and prohibit entry by persons, on the waters of Lake Union in an area bounded by the following points:

Latitude	*Longitude*
47°38'36" N	122°20'31" W
47°38'36" N	122°19'55" W
47°38'12" N	122°19'55" W
47°38'12" N	122°20'19" W

This restricted area is rectangular, measuring approximately 680 yards on each side. This distance will keep all spectators at least 340 yards from the fireworks barge.

(b) *Special local regulations.* (1) This event will take place annually from 9:30 p.m. P.D.T. to approximately 11:30 p.m. P.D.T. on each July 4, in the described waters of Lake Union, Seattle, Washington.

(2) Persons or vessels, other than official vessels, shall not enter or remain in the area described in paragraph (a) of this section during the hours this regulation is in effect.

(3) Patrol of the described area will be under the direction of a designated Coast Guard Patrol Commander. The Seattle Harbor Patrol may also participate in the enforcement of this exclusionary area. The Patrol Commander is empowered to forbid vessels or persons from entering the area described in paragraph (a) of this section during the hours this regulation is in effect.

(4) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled shall stop and comply with the orders of the patrol vessels: failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: September 29, 1990.

Rudy K. Peschel,

Acting Commander, Thirteenth Coast Guard District, DOT-U.S. Coast Guard.

[FR Doc. 90-23680 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD1-90-064]

Anchorage Grounds; Burlington Harbor, VT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish anchorage grounds in Lake Champlain. This anchorage is located in the waters contiguous to Burlington, Vermont. The Harbormaster for the Department of Parks and Recreation, City of Burlington, Vermont requested this area be designated to facilitate the growing number of transient pleasure craft needing mooring space in the area. This regulation will provide a safe anchorage well away from fairways where transient vessels may moor. There are no such anchorages available in the immediate area.

DATES: Comments must be received on or before November 23, 1990.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, N.Y. 10004-5096. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8 a.m. and 4:30 pm., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade C. W. Jennings, Waterways Management Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1-90-064) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG C. W. Jennings, Project Officer, Coast Guard Group New York and LT J. B. Gately, Project Attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

The area proposed for designation as anchorage grounds is located in the waters contiguous to Burlington, VT in Lake Champlain known as the Inner Harbor. The Captain of the Port, New York was contacted by Mr. Donald Bessler, Harbormaster for the City of Burlington, Vermont regarding the establishment of these anchorage grounds. The principal reason for the request is to provide a clearly defined area for transient recreational vessels to moor. Increased recreational vessel traffic in the Burlington area has prompted a need to specify exactly where transient vessels may moor to keep them from anchoring in commonly used vessel traffic lanes. The City of Burlington has indicated that it is willing to manage and administer this mooring area. The area will be available to the general public. There are no anchorage grounds designated in this area at this time.

This rule would allows transient vessels, not greater than 35 feet in length, to moor for periods not to exceed 7 days in any 30-day period. The area

will not affect navigable channels and is located where general navigation will not endanger or be endangered by anchored vessels. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110.

PART 110—[AMENDED]

1. The authority citation for 33 CFR part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Subpart B is amended by adding § 110.133 to read as follows:

§ 110.133 Lake Champlain, NY and VT

(a) *Burlington Harbor, Vt.* (1) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
44°28'26.7" N	73°13'33.4" W
44°28'26.2" N	73°13'27.1" W
44°28'21.8" N	73°13'26.1" W
44°28'11.8" N	73°13'34.0" W

and thence along the breakwater to the point of the beginning.

No vessel greater than 35 feet in length may use this anchorage and no vessel may remain at anchor longer than 7 days in any 30-day period unless specifically permitted to do so by the City of Burlington, Harbormaster.

(b) [Reserved]

Dated: August 29, 1990.

R. I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 90–23753 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD7–90–22]

Drawbridge Operation Regulations; Okeechobee Waterway, Caloosahatchee River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule: extension of comment period.

SUMMARY: This notice extends the comment period of the proposed rule to change drawbridge operating regulations for the Edison Memorial drawbridge, mile 134.5 at Fort Myers, Florida. Due to summer vacations and seasonal resident absences, numerous interested parties have been unable to provide meaningful response within the original 45 day comment period. In order to ensure all persons are afforded adequate time to comment on the proposed rule, the deadline for receipt of comments is extended.

DATES: The comment period on the notice of proposed rule making is extended to October 15, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, FL 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, Room 406, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney (305) 536–4103.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking was published on May 30, 1990, in the **Federal Register** (55 FR 21886).

Dated: September 28, 1990

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90–23679 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD1 89–065]

Regulated Navigation Area; Kill Van Kull, New York-New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard intends to adopt rules to make the waters of the Kill Van Kull, New York and New Jersey from Constable Hook to Bergen Point West Reach a Regulated Navigation Area (RNA). This action is necessary because of the extensive channel deepening project being undertaken jointly by the Army Corps of Engineers and the Port Authority of New York and New Jersey. The project is scheduled to begin in January 1991 and terminate late in CY 1995. A Regulated Navigation Area is necessary to insure the safety of vessels transiting the restricted channel during blasting and dredging operations.

DATES: Comments must be received on or before November 23, 1990.

ADDRESSES: Comments should be mailed to Captain of the Port, Bldg. 109, Governors Island, NY 10004–5098, Attention to: Waterways Management Office. The comments and other materials referenced in this notice will be available for inspection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to that address. Persons wishing to visit the Waterways Management Office must make an appointment so that clearance onto Governors Island (a military installation) can be arranged.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C.W. Jennings, Waterways Management Officer, Captain of the Port, New York at (212) 668–7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 89–065) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG C.W. Jennings, project officer, Captain of the Port, New York and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Kill Van Kull Channel is the area proposed for designation as a regulated navigation area. It is the channel located in the waters between Bayonne, New Jersey and Staten Island, New York. The U.S. Coast Guard is requesting this designation to enhance vessel safety during the extensive deepening project, which involves dredging and blasting, is being undertaken jointly by the U.S. Army Corps of Engineers and the Port Authority of New York and New Jersey. The Kill Van Kull Channel connects the deepwater ports of the New York Harbor but present channel depths restrict the full economy of existing and future generations of deep draft vessels. Tankships arriving in the port with drafts approaching the forty-five (45)

foot controlling depths of the Ambrose and Anchorage Channels must lighter some of their cargo to barges in the deep New York Harbor anchorages in order to reduce their drafts enough to safely transit the thirty-five (35) foot channel depths. This results in substantial lightering and delay costs. Container vessels cannot lighter in the anchorages and therefore must load to less than full drafts. This project, which is expected to last approximately five (5) years, will deepen the existing thirty-five (35) foot channel to forty (40) feet to accommodate the deeper draft vessels. During the project these channel restrictions and regulations will be imposed to facilitate the operations and enhance navigation safety. The area has been and will continue to be available for use by the general public. The users of this area, the marine industry, have been addressed formally and informally by the U.S. Coast Guard and the U.S. Army Corps of Engineers at various forums during the past three years. The parameters of these regulations are a direct result of the comments received, from the users, during those meetings and information obtained from the Computer Aided Operations Research Facility (CAORF) at the U.S. Merchant Marine Academy, Kings Point, N.Y.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this proposed regulated navigation area will assure a navigable channel remains open for normal traffic thereby minimizing the economic impact to any segment of the public. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

PART 165 [AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.065 is added to read as follows:

§ 165.065 Kill Van Kull, New York and New Jersey—regulated navigation area.

(a) *Description of the Regulated Navigation Area (RNA).* (1) The RNA encompasses all of the water in or adjacent to the Kill Van Kull (KVK) east of the KVK Light 16A (LLN 34585) in North of Shooters Island Reach, east of Shooters Island Light 2 (LLN 34620) in South of Shooters Island Reach, south of Newark Bay Channel Buoy 3 (LLN 34650) in Newark Bay South Reach, south of South Entrance Lighted Buoy 5 (LLN 34285) in the New Jersey Pierhead Channel, and west of Channel Junction Lighted Bell Buoy "KV" (LLN 34505) in Constable Hook Reach.

(2) Work within the RNA will be conducted under three separate contracts; 4A, 4B and 4C. Contract 4A encompasses the northern half of the Kill Van Kull and will be accomplished in two separate phases. Contract B will be confined to Bergen Point West Reach in the Kill Van Kull, west of the Bayonne Bridge and will be concluded in one phase. Contract 4C encompasses the southern half of the Kill Van Kull and will be accomplished in two separate phases.

(3) The entire project is expected to take approximately fifty seven (57) months with respective contracts lasting about nineteen (19) months each. Dredging of soft materials and limited blasting operations shall occur between the work areas, during both phases of contracts 4A and 4C, to remove high spots. The dredges shall operate on the same side of the channel as the work area during the respective contract phase.

(b) *Definitions of Terms Used in This Part.* (1) *COTP* means the Captain of the Port, New York.

(2) *District Commander* means the officer of the Coast Guard designated to command the First Coast Guard District.

(3) *Regulated vessels* means all self-propelled vessels greater than 1000 gross tons and all tugs with tows.

(4) *RNA* means regulated navigation area.

(5) *Vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

(6) *Work area* means those places within the RNA where concentrated blasting and dredging shall be conducted.

(c) *Description of Work Areas in the RNA.* (1) Contract 4A, Phase I:

(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38'32.2" N	074°08'23.2" W
40°38'36.5" N	074°08'24.2" W
40°38'40.3" N	074°08'02.2" W
40°38'40.0" N	074°08'00.9" W
40°38'35.5" N	074°08'00.1" W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°39'02.2" N	074°04'29.2" W
40°39'05.9" N	074°04'27.4" W
40°39'02.8" N	074°04'13.7" W
40°38'58.0" N	074°04'16.1" W

and thence to the point of beginning and the waters bounded by a line connecting the following points:

Latitude	Longitude
40°39'04.3" N	074°05'09.0" W
40°39'08.1" N	074°05'09.0" W
40°39'07.7" N	074°05'06.0" W
40°39'07.3" N	074°04'51.0" W
40°39'03.8" N	074°04'51.0" W

and thence to the point of the beginning.

(iii) *South of Shooters Island Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38'32.6" N	074°09'10.9" W
40°38'29.6" N	074°09'13.1" W
40°38'33.1" N	074°09'21.1" W
40°38'38.0" N	074°09'22.5" W

and thence to the point of beginning.

(2) Contract 4A, Phase II:

(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38'29.2" N	074°08'40.5" W
40°38'33.6" N	074°08'42.0" W
40°38'36.6" N	074°08'24.2" W
40°38'32.0" N	074°08'23.0" W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* Same as 33 CFR 165.065(b)(1)(ii).

(iii) *South of Shooters Island Reach.* Same as 33 CFR 165.065(b)(1)(iii).

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(d) *Regulations.* (1) Meeting or overtaking situations between regulated vessels in the RNA will not be permitted adjacent to work areas.

(2) Tugboats will not be permitted to transit the RNA with tows on a hawser.

(3) Liquefied Petroleum Gas (LPG) ships shall not be permitted to transit the RNA unless they are certified gas free.

(4) Vessels, including tow length, in excess of 300 feet will be required to have sufficient tugs alongside to maneuver the vessel under the prevailing conditions. Vessels with an operational thruster or thrusters shall not be exempt from the conditions of this paragraph.

(5) Vessels, including tow length, greater than 600 feet shall not be permitted to transit the RNA when sustained winds in the area are 20 knots or greater or when wind gusts exceed 35 knots.

(6) The decision to maneuver through the RNA during conditions of reduced visibility shall be with the concurrence of the vessels' master and pilot.

(7) Regulated vessels transiting with the prevailing current shall be regarded as the stand-on vessel.

(8) Any vessel enroute/intending to transit the RNA shall be required to take whatever steps are feasible to stay out of the RNA should they be advised by the drilling barge that a misfire or hangfire has occurred.

(9) All vessels transiting in the vicinity of the work areas where drill barges are operating shall be required to do so at no wake speed.

(10) All vessels shall initiate security calls at standard calling points prior to entering the RNA. The following is a list of entry areas and their respective calling points:

(i) Newark Bay—Port Elizabeth Marine Terminal, north side.

(ii) Elizabethport Reach—Howland Hook.

(iii) Upper Bay—Gowanus Flats Lighted Bell Buoy 22 (LLN 32255) when northbound and Gowanus Flats Lighted Bell Buoy 26 (LLN 32290) when southbound.

(iv) Pierhead Channel—Military Ocean Terminal, Bayonne.

(11) While transiting the RNA mariners shall make every effort to make their position known as well as be aware of the positions of other traffic.

(12) Due to this entire project being undertaken in separate contracts which are then divided into phases the exact time frames for each operation, the specific work areas for contracts 4B and 4C, and related Aids to Navigation information shall be published separately via a Local Notice to Mariners well in advance of any changes.

(13) Nothing contained in this regulation shall be construed as overriding any regulation or procedure which may be developed for the New York Vessel Traffic Service (VTS).

(14) The District Commander reserves the right to modify or delete any of the regulations contained in this section as deemed necessary. Notice shall be given for any modifications or deletions, which affect these regulations, occuring after the publication of this rulemaking.

(15) Waiver. The Captain of the Port, New York may, upon request, waive any regulation in this section if it is found that the proposed operations can be done safely. An application for waiver must be submitted not less than 24 hours before the intended operation and must state the need and describe the proposal.

Dated September 11, 1990.

R.I. Rybacki,

Commander, First Coast Guard District.

[FR Doc. 90-23754 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 200

Chapter 1 Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of intent to regulate.

SUMMARY: The Secretary of Education (Secretary) intends to amend the regulations implementing part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to clarify certain program requirements in the provision of chapter 1 services to children in institutions for neglected or delinquent (N or D) children that are not operated with Federal or State funds and children in local adult correctional institutions.

DATES: All comments, suggestions, or recommendations in response to this notice must be received on or before December 10, 1990.

ADDRESSES: All comments concerning this notice should be addressed to Mrs. Mary Jean LeTendre, Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043), Washington, DC 20202-6132.

FOR FURTHER INFORMATION CONTACT: Mrs. Wendy Jo New, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043), Washington, DC 20202-6132. Telephone: (202) 401-0701.

SUPPLEMENTARY INFORMATION: Part A of chapter 1 of title I of the ESEA provides financial assistance through State educational agencies to local educational agencies (LEAs) for projects designed to meet the special educational needs of educationally deprived children, including children in institutions for N or D children that are not operated with Federal or State funds and children in local adult correctional institutions ("local institutions"). Final regulations for this program were published in the **Federal Register** (54 FR 21752-809) on May 19, 1989.

Historically, the chapter 1 LEA regulations have addressed only definitions of local institutions and the count of local N or D children for allocating chapter 1 funds to counties and LEAs. The regulations have never dealt with how program requirements are implemented for N or D children. The structure of chapter 1 programs for N or D children in local institutions, as well as the operation of those institutions and needs of N or D children in those institutions, may differ considerably from chapter 1 programs for children enrolled in public and private schools in an LEA. As a result, there may be a need for regulations that take these variances into consideration and focus specifically on the provision of chapter 1 services to N or D children in local institutions. The Secretary seeks comments and recommendations on LEAs' need for further clarification and implications of that clarification, including any cost implications, on the following issues related to the provision of chapter 1 services for N or D children in local institutions and any other issues concerning these services:

1. Whether all N or D children are eligible for chapter 1 services or whether services may be provided only to educationally deprived N or D children; whether an LEA is required to identify N or D children who are in greatest need and, if so, how greatest need should be determined.

2. Whether any additional eligibility requirements such as length of stay should apply.

3. How the provisions in section 1013(c) of chapter 1 governing allocation of resources on the basis of the number and needs of children to be served apply to services for N or D children.

4. How the parental involvement provisions apply to N or D children if there is no parental contact.

5. How certain requirements, such as those related to size, scope, and quality and schoolwide projects, apply to chapter 1 programs in local institutions.

6. How program improvement and evaluation requirements apply, given

that the N or D population may be transient and the services provided may differ significantly from those provided to other children.

7. The extent to which the application of the supplement, not supplant and comparability requirements is feasible for local N or D services.

8. The extent to which LEAs are responsible for serving N or D children.

9. Whether a local institution must be a residential facility in order for its children to be eligible for chapter 1 services.

10. The extent to which an LEA may contract with a local institution to provide chapter 1 services.

Invitation to Comment:

Interested persons are invited to submit comments regarding the above and any other issues pertaining to the provision of chapter 1 services to N or D children in local institutions. The Secretary specifically requests comments on (1) whether Federal regulations are needed respecting chapter 1 services to N or D children in local institutions; and (2) if so, what specific regulations are needed. If specific regulations are recommended, please include a brief statement of how those regulations would assist in addressing the needs of N or D children in local institutions under chapter 1. All comments submitted in response to this notice of intent to regulate will be available for public inspection, during and after the comment period in room 2043, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Dated: October 2, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-23707 Filed 10-5-90; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7001]

Proposed Flood Elevation Determinations; Al et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measure that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modifed base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calcuate the approriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determination, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern further construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; or itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Town of Odenville, St. Clair County.	Beaver Creek	About 1800 feet upstream of Maddox Road	None	*698
			About 300 feet upstream of U.S. Highway 411	None	*729
Maps available for inspection at the Town Hall, P.O. Box 113, Odenville, Alabama.					
Send comments to The Honorable James Banks, Mayor, Town of Odenville, Town Hall, P.O. Box 113, Odenville, Alabama 35120					
Arkansas	Fort Smith, City Sebastian County.	Arkansas River	Downstream corporate limits	*406	*405

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Upstream corporate limits	*417	*419
		Massard Creek	At confluence with Arkansas River	*406	*405
			Approximately .3 river mile upstream of State Route 22.	*406	*405
		Little Massard Creek	At confluence with Massard Creek	*406	*405
			Approximately .2 river mile upstream of Meandering Way.	*406	*405
		Sunnymede Creek	At confluence with Arkansas River	*409	*407
			At downstream side of Interstate 540	*409	*408
		No Name Creek	At confluence with Sunnymede Creek	*409	*407
			Approximately .15 river mile upstream of Cliff Drive.	*409	*408
		Oak Park Tributary	At confluence with Arkansas River	*412	*413
			At upstream side of State Route 255	*412	*413
		May Branch	At confluence with Arkansas River	*417	*418
			At downstream side of Fort Smith Levee & Floodwall.	*417	*418
		Poteau River	At confluence with Arkansas River	*417	*420
			At confluence of Mill Creek	*417	*420
		Mill Creek	At confluence with Poteau River	*418	*420
			Approximately .9 river mile upstream of Jenny Lind Road.	*516	*518

Maps available for inspection at the Engineering Department, 623 Garrison Avenue, Room 409, Fort Smith, Arkansas.

Send comments to The Honorable William Vines, Mayor of the City of Fort Smith, Sebastian County, P.O. Box 1908, Fort Smith, Arkansas 72902.

California	City of Alameda, Alameda County.	San Francisco Bay	About 3,000 feet north of intersection of Atlantic Avenue and Main Street.	None	*7
			Intersection of Mariner Village Parkway	None	*7
			Approximately 2,000 feet east of intersection of Maitland Drive and Clubhouse Memorial Drive.	None	*1

Maps are available for review at City Hall, 2263 Santa Clara Avenue, Room 204, Alameda, California.

Send comments to The Honorable Chuck Corica, Mayor, City of Alameda, City Hall, 2263 Santa Clara Avenue, Alameda, California 94501.

Georgia	City of Toccoa, Stephens County.	Eastanollee Creek	About 600 feet downstream of Collins Road	*925	*925
			Just downstream of Collins Road	*930	*927
			Just upstream of Collins Road	*931	*934
			About 275 feet downstream of Davis Avenue	*937	*943
			Just upstream of Davis Avenue	None	*946
		Eastanolle Creek Tributary A	At mouth	*929	*927
			Just downstream of Collins Road	*931	*927
			Just upstream of Collins Road	*931	*934
			Just downstream of Morgan Street	*932	*936

Maps available for inspection at the City of Toccoa, Community Development Building, Toccoa, Georgia.

Send comments to The Honorable Jim Calvin, City Manager, City of Toccoa, P.O. Box 579, Toccoa, Georgia 30577

Mississippi	City of New Augusta, Perry County.	Leaf River	About 1,050 feet downstream of confluence of Gum Branch.	None	*103
			About 1.7 miles upstream of State Highway 29	None	*111

Maps available for inspection at the City Hall, City Clerk's Office, New Augusta, Mississippi.

Send comments to The Honorable Robert J. McSwain, Sr., Mayor, City of New Augusta, City Hall, Main Street, P.O. Box 401, New Augusta, Mississippi 39462

Mississippi	Town of Sumrall, Lamar County.	Mill Creek	About 1,000 feet upstream of mouth	None	*264
			About 0.51 mile upstream of State Highway 42	None	*289

Maps available for inspection at the Town Hall, P.O. Box 247, Sumrall, Mississippi.

Send comments to The Honorable E. Darwin Graham, Mayor, Town of Sumrall, P.O. Box 247, Sumrall, Mississippi 39482

Mississippi	Unincorporated Areas of Lamar County.	Mill Creek	Within community	None	*289

Maps available for inspection at the Lamar County Courthouse, County Administrator's Office, Purvis, Mississippi.

Send comments to The Honorable V.E. Douglas, President, Lamar County Board of Supervisors, P.O. Box 1240, Purvis, Mississippi 39475

Mississippi	Unincorporated Areas of Perry County.	Leab River	About .76 mile downstream of confluence of Gum Branch.	None	*102
			About 1.66 miles upstream of confluence of Milky Creek.	None	*113

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Perry County Courthouse, Board of Supervisors Office, New Augusta, Mississippi.					
Send comments to The Honorable John H. Garner, President, Perry County Board of Supervisors, Perry County Courthouse, P.O. Box 198, New Augusta, Mississippi 39462.					
Nevada	City of Wells, Elko County	Woodhills Drain	At Tenth Street Extension	None	*5,626
			Approximately 200 feet upstream of Southern Pacific Railroad.	None	*5,631
			Just upstream of U.S. Highway 40	None	*5,640
			Just upstream of U.S. Highway 93	None	*5,646
Maps are available for review at the City Clerk's Office, 279 Clover Avenue, Wells, Nevada.					
Send comments to The Honorable George SH Yan, Mayor, City of Wells, P.O. Box 366, Wells, Nevada 89835.					
Oklahoma	Comanche, City Stephens County.	Cow Creek (Lower Reach)	Approximately 1,400 feet upstream of Oklahoma, Kansas, Texas Railroad.	None	*977
			Approximately 1.1 miles upstream of confluence of Salt Creek.	None	*993
Maps available for inspection at the City Hall, 115 North 2nd Street, Comanche, Oklahoma					
Send comments to The Honorable Raymond Morehead, Mayor of the City of Comanche, Stephens County, 115 North 2nd Street, Comanche, Oklahoma, 73529					
Oklahoma	Stephens County, Unincorporated Areas.	Cow Creek	Approximately 400 feet downstream of Oklahoma, Kansas, Texas Railroad.	None	*971
			Approximately 1.1 miles upstream of confluence of Salt Creek.	None	*993
		Salt Creek	Approximately 1,200 feet upstream of Church Avenue.	None	*1,000
			Approximately 1,550 feet upstream of Church Avenue.	None	*1,002
Maps available for inspection at the Stephens County Courthouse, Duncan, Oklahoma.					
Send comments to The Honorable Gary Ledford, Chairman of the Stephens County Board of Commissioners, Stephens County Courthouse, Duncan, Oklahoma 73533					
Oklahoma	Vinita, City, Craig County	Elm Creek Tributary	Approximately 2,000 feet upstream of its confluence with Elm Creek.	None	*688
			At upstream side of Adair Street	None	*695
Maps available for inspection at the City Hall, 104 East Illinois, Vinita, Oklahoma.					
Send comments to The Honorable Jo Montana, Mayor of the City of Vinita, Craig County, P.O. Box 329, Vinita, Oklahoma 74301.					
Oregon	City of Fairview, Multnomah County.	Fairview Creek	At the confluence of the overflow from Northeast Glisan Street.	*184	*184
			Approximately 675 feet downstream of Northeast Glisan Street.	*203	*202
			Just downstream of Northeast Glisan Street	*209	*207
		Columbia River	At the northern corporate limits	None	*31
		Fairview Lake	Along the southern shoreline	*14	*14
Maps available for review at the Department of Planning, 300 Harrison Street, Fairview, Oregon.					
Send comments to The Honorable Fred Carlson, Mayor, City of Fairview, P.O. Box 337, 300 Harrison Street, Fairview, Oregon 97024.					
Pennsylvania	Douglass, Township Montgomery County	Swamp Creek	Approximately 1,450 feet upstream of Detar Road.	*281	*280
			Approximately 0.8 mile upstream of Swamp Creek Road	*301	*302
Maps available for inspection at the Township Building, 1320 East Philadelphia Avenue, Gilbertsville, Pennsylvania.					
Send comments to The Honorable Walter Hriak, Chairman of the Township of Douglass Board of Supervisors, Montgomery County, 1320 East Philadelphia Avenue, Gilbertsville, Pennsylvania 19525.					
Texas	Dallas, City, Dallas, Denton, Collin, Rockwall, Kaufman Counties.	Elm Fork of Trinity River	At Missouri-Kansas—Texas Railroad	*423	*424
			Approximately 700 feet upstream of Sandy Lake Road.	*444	*445
		Mountain Creek	Approximately 350 upstream of Singleton Boulevard.	*427	*426
			At the Camp Wisdom Road	*476	*466
		Bachman Branch	At the confluence with Elm Fork of Trinity River.	*424	*426
			Approximately 200 feet upstream of Harry Hines Boulevard.	*425	*426
		Joe's Creek	At the confluence with Elm Fork of Trinity River.	*424	*426
			Approximately 150 feet downstream of Interstate Route 35E.	*425	*426

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Grapevine Creek	At the confluence with Elm Fork of Trinity River.	*437	*439
			Approximately .4 mile upstream of Ledbetter Road.	*438	*439
		Farmers Branch Creek	Approximately 170 feet upstream of St. Louis-San Francisco Railroad.	*439	*441
			Approximately 420 feet upstream of St. Louis-San Francisco Railroad.	*439	*443
			Approximately 670 feet downstream of Rawhide Creek.	None	*456
			Approximately 370 feet downstream of Denton Road.	None	*458
			Approximately 100 feet downstream of Ford Road.	None	*466
		Woody Branch	Approximately 150 feet upstream of confluence with Fivemile Creek.	*478	*479
			Approximately 100 feet upstream of Interstate Route 35E.	*485	*486
		Fivemile Creek	Approximately 750 feet downstream of the confluence of Alice Branch.	*472	*471
			Approximately 200 feet downstream of Rockport Drive.	*482	*483
		Stream 8C1	At confluence with Mountain Creek	*435	*434
			Approximately .4 mile upstream with Mountain Creek.	*435	*434
		West Fork of Joe's Creek	At the confluence with Joe's Creek	*424	*426
			Approximately 750 feet downstream of Manana Drive.	*429	*430

Maps available for inspection at the City Hall, 1500 Marilla, Dallas, Texas.

Send comments to The Honorable Annette Strauss, Mayor of the City of Dallas, Dallas, Denton, Collin, Rockwall, and Kaufman Counties, City Hall, 1500 Marilla, Dallas, Texas 75201.

Texas	Double Oak, Town, Denton County.	Timber Creek	Approximately 100 feet upstream of Forest Lane.	*626	*625
			At upstream corporate limits	*629	*628

Maps available for inspection at the Town Hall, 1100 Cross Timbers Drive, Double Oak, Texas.

Send comments to The Honorable Jim Handzel, Mayor of the Town of Double Oak, Denton County, Town Hall, 1100 Cross Timbers Drive, Double Oak, Texas 75067.

Texas	Irving, City, Dallas County	Bear Creek	Approximately 200 feet downstream of Missouri-Kansas-Texas railroad.	* 465	* 459
			Approximately 1,300 feet upstream of County Line Road.	* 481	* 479
		Estelle Creek	At the confluence with Bear Creek	* 473	* 470
			At approximately 1,100 feet downstream of Pioneer Drive.	* 475	* 474

Maps available for inspection at the City Hall, 825 West Irving Boulevard, Irving, Texas.

Send comments to The Honorable Bob Pierce, M.D., Mayor of the City of Irving, Dallas County, 825 West Irving Boulevard, Irving, Texas 75060.

Texas	Montgomery County, Unincorporated Areas.	Mill Creek	Approximately 500 feet upstream of FM 1488	* 201	* 200
			Approximately 700 feet upstream of County boundary.	* 249	* 248
		Mill Creek Tributary No. 5	At confluence with Mill Creek	* 209	* 207
			Approximately 2.2 miles downstream of FM 1486.	* 221	* 220

Maps available for inspection at the County Courthouse, Conroe, Texas.

Send comments to The Honorable Al Stahl, Montgomery County Judge, County Courthouse, Conroe, Texas 77301.

Texas	Stephenville, City, Erath County.	Tributary to Bosque River	Approximately 80 feet downstream of the Prairie Wind Street Bridge.	None	* 1,283
			At State Highway 8 Bridge	None	* 1,310

Maps available for inspection at the City Hall, 354 North Belknap, Stephenville, Texas.

Send comments to The Honorable George Swearingen, Mayor of the City of Stephenville, Erath County, 354 North Belknap, Stephenville, Texas 76401.

Texas	Waxahachie, City, Ellis County.	Mustang Creek	Approximately 50 feet downstream of FM 878	* 556	* 557
			Approximately 1,000 feet upstream of U.S. Route 77.	None	* 623

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, City Engineer's Office, 401 South Rogers, Waxahachie, Texas. Send comments to The Honorable Joe Grubbs, Mayor of the City of Waxahachie, Ellis County, 401 South Rogers, P.O. Box 757, Waxahachie, Texas 75165.					
West Virginia	Lincoln County, Unincorporated Areas.	Little Coal River	At a point approximately 850 feet upstream of the confluence of Ivy Creek.	None	*660
			At the upstream County boundary	None	*670
Maps available for inspection at the County Courthouse, 8000 Court Street, Hamlin, West Virginia. Send comments to The Honorable Vernon McCoy, President of the Lincoln County Commissioners, County Courthouse, 8000 Court Street, Hamlin, West Virginia 25523.					

Issued: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-23763 Filed 10-5-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 89-88, DA 90-1278]

Discrimination in Provision of Satellite Delivered Superstation and Network Station Programming

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule; extension of time.

SUMMARY: This order, granting a Motion for Extension of Time filed by the National Telecommunications Cooperative (NRTC), extends the time to file reply comments in this proceeding, (55 FR 27478, July 3, 1990) until October 23, 1990. The additional time is granted pending action by the Common Carrier Bureau on NRTC's Freedom of Information Act request for certain costing information filed by two satellite carriers.

DATES: Reply comments must be submitted on or before October 23, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara at (202) 634-1624.

SUPPLEMENTARY INFORMATION:

In the Matter of Inquiry Into the Existence of Discrimination in the Provision of Superstation and Network Station Programming.

Adopted September 25, 1990.

Released September 26, 1990.

By the Common Carrier Bureau.

1. The National Rural Telecommunications Cooperative (NRTC) has filed a motion to extend the time in which to file reply comments in the above-captioned proceeding. As discussed below, NRTC's motion is granted in part.

2. On June 21, 1990 the Commission issued a *Further Notice of Inquiry* (*Further Notice*) in this proceeding in order to determine whether satellite carriers are discriminating against distributors to home earth stations in favor of cable operators in the provision of superstation and network station programming. In connection with this *Further Notice*, satellite carriers were directed to provide the Commission with certain contracts as well as information on the comparative costs of serving home dish distributors versus cable operators, SMATV systems and wireless cable systems. Two satellite carriers, Eastern Microwave, Inc. (Eastern) and United Video, Inc. (United), requested confidential treatment for this cost information.

3. On September 20, 1990, NRTC filed a request pursuant to the Freedom of Information Act (FOIA) and section 0.461 of the Commission's rules to obtain copies of the cost information exhibits filed by Eastern and United. NRTC also filed a motion to extend the time to file reply comments, currently scheduled to be filed on September 28, 1990, "until thirty days after the Commission releases the requested costing information or otherwise disposes of NRTC's FOIA request by final Order." NRTC asserts that it needs to review the cost information in order to prepare meaningful reply comments.

4. Although it appears appropriate to allow some additional filing time while the Common Carrier Bureau is making a determination on NRTC's FOIA request, the amount of time requested by NRTC is excessive and, if granted, would unduly delay Commission action in this proceeding. Therefore, the date for filing Reply Comments is extended until October 23, 1990. Such an extension will afford the Bureau sufficient time to consider and rule on the FOIA request as well as give all parties the opportunity to determine the course of action they will take as a result of the Bureau's action.[1] Of course, if additional information is included in the public record of this proceeding as a result of the FOIA action, parties will be given additional time to review and comment on this information.

5. Accordingly, it is ordered that the deadline for filing reply comments in the above-captioned proceeding is extended until October 23, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90-23786 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition submitted by Mr. Dennis Furr asking the agency to revise Federal Motor Vehicle Safety Standard No. 222; *School Bus Seating and Crash Protection*. Mr. Furr sought revisions to the Standard regarding how the number of seating positions on a school bus are determined. Additionally, he requested that new provisions be added which would specify the seating capacity of school bus seats. The petition is denied, because changes in determining the number of seating positions on a school bus could permit a lessening of the

[1] *See* procedures in § 0.461 of the Commission's rules, 47 CFR 0.461.

occupant protection capabilities of a school bus.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4799.

SUPPLEMENTARY INFORMATION: NHTSA has promulgated two sets of "regulations" affecting school buses. The first set, issued under the authority of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*), applies to the manufacture and sale of new motor vehicles and includes the motor vehicle safety standards applicable to the manufacture and sale of new school buses. Compliance with these standards is mandatory for new vehicle manufacturers.

NHTSA has issued the second set of "regulations," or guidelines, for school buses under the Highway Safety Act (23 U.S.C. 401 *et seq.*). Guidelines issued under this Act are not mandatory requirements; rather, they are recommendations from NHTSA to the States for developing their highway safety programs. Individual States have chosen to adopt some or all of the guidelines as policies governing their highway safety programs. Among these guidelines is Highway Safety Program Guideline No. 17, *Pupil Transportation Safety*. Guideline No. 17 includes recommendations for the operational aspects of State pupil transportation programs, such as school bus identification, maintenance, driver training and other matters related to the use and operation of school buses.

Federal Motor Vehicle Safety Standard No. 222, *School Bus Seating and Occupant Protection* specifies occupant protection requirements for school bus passenger seating and restraining barriers. The Standard is written in terms of performance requirements for the seats and restraining barriers. The requirements are designed to ensure that the seats and restraining barriers used in school buses are capable of providing acceptable levels of crash protection to seated occupants of school buses who may impact structures within the bus during a crash or sudden driving maneuver.

The performance requirements contained in S4 of the Standard must be satisfied by school bus bench seats during the specified tests. For the purposes of determining loading to which a bench seat is subjected during the testing, S4.1 of Standard No. 222 specifies that the width of a bus seat in inches, is divided by 15 and rounded to the nearest whole number, which is the number of seating positions. For example, a seat 39 inches wide divided by 15 would yield 2.6, which is rounded to three. The loading to which the seat is subjected for the performance tests is then the specified loading multiplied by three.

The test conditions in Standard No. 222 are intended to expose the passenger seats and restraining barriers to force levels that are sufficiently high that one can reasonably conclude that the equipment is unlikely to fail as a result of exposure to even severe crash conditions. The force derived in the above example by rounding 2.6 up to three for a 39 inch seat is necessarily a greater force than would be exerted if only two occupants are in the seat. Subjecting seats to this increased loading ensures a margin of safety for school bus seats so that one can confidently predict they will withstand even severe crash conditions.

In a petition dated April 21, 1990, Mr. Dennis Furr (also referred to below as "petitioner") asked NHTSA to revise the method for calculating the capacity of a bench seat in Standard No. 222. Mr. Furr sought to have the agency revise the formula discussed above by dividing the seat width by 15 and ignoring any remainder. Thus, a 39 inch wide seat would be considered as having two seating positions. The petitioner asserted that this change is needed to avoid overcrowding on school buses.

Mr. Furr's petition appears to be based upon the misconception that the passenger capacity for school buses is based on the formula in the standard for determining the test loading for seats and that school bus users are somehow required by Federal law to obey the capacity limit so determined. That is not the case. In the first place, the agency does not have any authority to impose operational requirements under either Act. Further, even if the agency possessed the requisite authority, it is not clear, given the wide range of ages and sizes of students carried on school buses (from pre-primary through high school football teams), how NHTSA could impose a meaningful requirement for passenger seating capacity on school buses in operation. For example, a school bus seat that would easily accommodate three small children may only be able to accommodate two high school seniors.

The agency emphasizes that it is not the intention or design of Standard No. 222 to require or suggest that a school bus seat should be occupied by the maximum number of persons as determined by S4.1 of the Standard for purposes of crash testing. Instead, the Standard is intended to ensure that school bus seats and restraining barriers will perform safely and effectively by imposing loads during testing that are representative of severe crash conditions. This is the safety margin discussed above. Standard No. 222 addresses the issue of potential overcrowding by including this safety margin. NHTSA is unaware of any crash data that indicate school bus seats and restraining barriers as required by Standard No. 222 are not providing effective crash protection. Since Standard No. 222 already includes measures to address the issue of potential overcrowding, and those measures have been effective, the agency concludes that there is no reason to adopt Mr. Furr's suggested means of addressing the same problem.

In addition to his suggested changes to Standard No. 222, the petitioner also requested changes to Highway Safety Program Guideline No. 17 to address his concerns about school bus overcrowding. As mentioned above, requirements for use and operation of school buses are primarily a matter of State law, and the adoption of Highway Safety Program Guidelines is optional for States. However, NHTSA is currently seeking comments on proposed revisions to Guideline 17 (see 55 FR 20471, May 17, 1990). The agency is treating Mr. Furr's requests about overcrowding as comments on the proposed revision, and will address them in issuing final revisions to the Guideline.

For the preceding reasons, NHTSA denies Mr. Furr's petition.

Authority: Secs. 103, 199, Pub. L. 89–563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50.

Issued: October 2, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–23772 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Members of Performance Review Board: Revision of List of Performance Review Board Positions

AGENCY: ACTION.

ACTION: Revision of list of Performance Review Board positions.

SUMMARY: ACTION publishes the revised list of positions which comprise the Performance Review Board established by ACTION under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Beaulieu, Director of Personnel, ACTION, 1100 Vermont Avenue, NW., room 5101, Washington, DC 20525, (202) 634–9263.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 (CSRA), which created the Senior Executive Service (SES), requires that each agency establish one or more Performance Review Boards to review and evaluate the initial appraisal of a senior executive's performance and to make recommendations to the appointing authority concerning the performance of the senior executive as well as recommendations for bonuses.

The incumbents of the following positions will serve as members of the ACTION Performance Review Board:

1. Associate Director for Management and Budget—Chairman
2. Executive Officer—Office of the Director
3. Comptroller
4. Associate Director for Domestic and Anti-Poverty Operations
5. Deputy General Counsel
6. Deputy Assistant Secretary for Administration, Department of Transportation

Issued in Washington, DC, on September 28, 1990.

Jane A. Kenny,

Director.

[FR Doc. 90–23757 Filed 10–5–90; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Region; Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decision subject to appeal under 36 CFR part 217 shall begin October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Joni Sue Hanson, Regional Appeals Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, Aera Code 414–297–3661.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester

Milwaukee Journal, published daily in Milwaukee, Milwaukee County, Wisconsin, for decisions affecting National Forest System lands in the States of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, Wisconsin and for any decision of Region-wide impact.

Allegheny National Forest, PA

Forest Supervisor Decisions

Warren Times Observer, Warren, Warren County, Pennsylvania.

District Rangers Decisions

Sheffield District: Warren Times Observer, Warren, Warren County, Pennsylvania.

Bradford District: Bradford Era, Bradford, McKean County, Pennsylvania.

Marienville District: Warren Times Observer, Warren, Warren County, Pennsylvania.

Oil City Derrick, Oil City, Venango County, Pennsylvania Ridgway District: Ridgway Record, Elk County, Pennsylvania.

Chequamegon National Forest, WI

Forest Supervisor Decisions

Milwaukee Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

District Rangers Decisions

Park Falls District: Park Falls Herald, published weekly in Park Falls, Price County, Wisconsin.

Glidden District: Glidden Enterprise, published weekly in Glidden, Ashland, County, Wisconsin.

Washburn District: The Daily Press, published daily in Ashland, Ashland County, Wisconsin.

Hayward District: Sawyer County Record, published weekly in Hayward, Sawyer County, Wisconsin.

Medford District: The Star News, published weekly in Medford, Taylor County, Wisconsin.

Chippewa National Forest, MN

Forest Supervisor Decisions

Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota.

District Ranger Decisions

Blackduck District: Blackduck American, published weekly in Blackduck, Beltrami County, Minnesota.

Cass Lake District: Cass Lake Times, published weekly in Cass Lake, Cass County, Minnesota.

Deer River District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Marcell District: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota.

Walker District: Walker Pilot Independent, published weekly in Walker, Cass County, Minnesota.

Green Mountain National Forest, VT

Forest Supervisor Decisions

Rutland Herald, published daily in Rutland, Rutland County, Vermont.

District Rangers Decisions

Manchester District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Bennington Banner, published daily in Bennington, Bennington County, Vermont.

Brattleboro Reformer, published daily in Brattleboro, Windham County, Vermont.

Rochester District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Burlington Free Press, published daily in Burlington Chittenden County, Vermont.

Middlebury District: Rutland Herald, published daily in Rutland, Rutland County, Vermont.

Addison County Independent, published twice a week in Middlebury, Addison County, Vermont.

Finger Lakes National Forest, NY

Forest Supervisors & District Rangers (Hector District) Decisions

Ithaca Journal, published daily in Ithaca, Tempkins County, New York.

Hiawatha National Forest, MI

Forest Supervisor Decisions

Daily Press, published daily in Escanaba, Delta County, Michigan.

Mining Journal, published daily in Munising, Alger County, Michigan.

Munising News, published weekly in Munising, Alger County, Michigan.

Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan.

District Rangers Decisions

Rapid River: Daily Press, published daily in Escanaba, Delta County, Michigan.

Manistique: Daily Press, published daily in Escanaba, Delta County, Michigan.

Munising: Mining Journal, published daily in Munising, Alger County, Michigan.

Munising News, published weekly in Munising, Alger County, Michigan.

Sault Ste. Marie: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan.

St. Ignace news, published weekly in St. Ignace, Mackinac County, Michigan.

Huron-Manistee National Forests, MI

Forest Supervisor Decisions

Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan.

Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Ludington Daily News, published daily in Ludington, Mason County, Michigan.

Alcona County Review, published weekly in Harrisville, Alcona County, Michigan.

Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan.

Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan.

Iosco County News Herald, published weekly in East Tawas, Iosco County, Michigan.

Fremont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan.

Muskegon Chronicle, published daily in Muskegon, Muskegon County, Michigan.

Grand Rapids Press, published daily in Grand Rapids, Kent County, Michigan.

Big Rapids Pioneer, published daily in Big Rapids, Mecosta County, Michigan.

District Rangers Decisions

Baldwin District: Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Ludington Daily News, published daily in Ludington, Mason County, Michigan.

Cadillac District: Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan.

Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Lake County Star, published weekly in Baldwin, Lake County, Michigan.

Harrisville District: Alcona County Review, published weekly in Harrisville, Alcona County, Michigan.

Manistee District: Manistee News Advocate, published daily in Manistee, Manistee County, Michigan.

Mio District: Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan.

Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan.

Tawas District: Iosco County News Herald, published weekly in East Tawas, Iosco County, Michigan.

White Cloud District: Fremont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan.

Muskegon Chronicle, published daily in Muskegon, Muskegon County, Michigan.

Grand Rapids Press, published daily in Grand Rapids, Kent County, Michigan.

Big Rapids Pioneer, published daily in Big Rapids, Mecosta County, Michigan.

Mark Twain National Forest, MO

Forest Supervisor Decisions

Rolla Daily News, published in Rolla, Phelps County, Missouri.

District Ranger Decisions

Ava-Cassville District: Springfield News Leader, published daily in Springfield, Greene County, Missouri.

Cadar Creek District: Fulton Sun, published daily in Fulton, Callaway County, Missouri.

Doniphan District: Prospect News, published weekly in Doniphan, Ripley County, Missouri.

Eleven Point District: Current Wave, published weekly in Eminence, Shannon County, Missouri.

Rolla District: Rolla Daily News, published daily in Rolla, Phelps County, Missouri.

Houston District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri.

Poplar Bluff District: Daily American Republic, published daily in Poplar Bluff, Butler County, Missouri.

Potosi/Fredericktown District: St. Louis Post-Dispatch, published daily in St. Louis, St. Louis County, Missouri.

Salem District: The Salem News, published Tuesday and Thursday in Salem, Dent County, Missouri.

Willow Springs District: West Plains Daily Quill, published daily in West Plains, Howell County, Missouri.

Monongahela National Forest, WV

Forest Supervisor Decisions

The Intermountain, published daily in Elkins, Randolph County, West Virginia.

District Ranger Decisions

Cheat District: The Parsons Advocate, published weekly in Parsons, Tucker County, West Virginia.

Gauley District: The News Leader, published weekly in Richwood; Nicholas County, West Virginia.

Greenbrier District: The Pocahontas Times, published weekly in Marlington, Pocahontas County, West Virginia.

Marlinton District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, West Virginia.

Potomac District: The Grant County Press, published weekly in Petersburg, Grant County, West Virginia.

White Sulphur Springs District: The Register/Herald, published daily in Beckley, Raleigh County, West Virginia.

Nicolet National Forest, WI

Forest Supervisor Decisions

Rhinelander Daily News published daily Sunday through Friday in Rhinelander, Onieda County, Wisconsin.

District Ranger Decisions

Eagle River District, Florence District, Lakewood District and Laona District: Rhinelander Daily News published daily Sunday through Friday in Rhinelander, Onieda County, Wisconsin.

Ottawa National Forest, MI

Forest Supervisor Decisions

Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan.

District Ranger Decisions

Bergland District, Bessemer District, Iron River District, Kenton District, Ontonagon District, and Watersmeet District:

Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan.

Shawnee National Forest, IL

Forest Supervisor Decisions

Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois.

District Ranger Decisions

Elizabethtown District, Jonesboro District, Murphysboro District, and Vienna District: Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois.

Superior National Forest, MN

Forest Supervisor Decisions

Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota.

District Rangers Decisions

Gunflint Ranger District: Cook County News-Herald, published weekly in Grand Marias, Cook County, Minnesota.

Kawishiwi Ranger District: Ely Echo, published weekly in Ely, St. Louis County, Minnesota.

LaCroix Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota.

Laurentian Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota; and Lake County News-Chronicle, published weekly in Two Harbors, Lake County, Minnesota.

Tofte Ranger District: Duluth News-Tribune published daily in Duluth, St. Louis County, Minnesota.

Hoosier National Forest, IN

Forest Supervisor Decisions

Sunday Herald Times, published in Bloomington, Monroe County, Indiana.

District Ranger Decisions

Brownstown District: Sunday Herald Times, published in Bloomington, Monroe County, Indiana.

Tell City District: The News, published in Tell City, Perry County, Indiana.

Wayne National Forest, OH

Forest Supervisor Decisions

The Athens Messenger, published in Athens, Athens County, Ohio.

District Ranger Decisions

Athens District: The Athens Messenger, published in Athens, Athens County, Ohio.

Ironton District: The Ironton Tribune, published in Ironton, Lawrence County, Ohio.

White Mountain National Forest, NH and ME

Forest Supervisor Decisions

The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

District Ranger Decisions

Ammonoosuc Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Androscoggin Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Evans Notch Ranger District: The Lewiston Sun, published daily in Lewiston, County of Androscoggin, Maine.

Pemigewasset Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Saco Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.

Dated: October, 1, 1990.

Larry Payne

Deputy Regional Forester.

[FR Doc. 90-23698 Filed 10-5-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing on draft amendments to the Fishery Management Plans for the Stone Crab Fishery and Spiny Lobster Fishery of the Gulf of Mexico to address overfishing and possible management actions to arrest overfishing. Individuals and organizations may comment in writing to the Council at the address given below if they are unable to attend the hearing.

DATES: Comments must be received by November 9, 1990. The hearing is scheduled for Thursday, October 25, 1990, from 6 p.m. to 10 p.m.

ADDRESSES: Comments may be mailed to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida, 33609. The hearing will be held at the Marathon High School Cafeteria, 350 Sombrero Beach Road, Marathon, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 813-228-2815.

Dated: October 2, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-23748 Filed 10-5-90; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on Draft Amendment 5 to the Shrimp Fishery of the Gulf of Mexico Fishery Management Plan that specifies a definition of overfishing for the Gulf shrimp fisheries and possible management actions to prevent overfishing. The amendment would also set the cooperative seasonal closure of the exclusive economic zone off Texas to conform with a recent change in the closure of state waters. Individuals and organizations may comment in writing to the Council at the address given below if they are unable to attend the hearings.

DATES: Written comments will be accepted until November 14, 1990. The hearings are scheduled as follows:

1. Monday, October 22, 1990, 7 p.m. to 10 p.m., Corpus Christi, Texas.

2. Tuesday, October 23, 1990, 7 p.m. to 10 p.m., Kenner, Louisiana.

3. Wednesday, October 24, 1990, 7 p.m. to 10 p.m., Mobile, Alabama.

4. Wednesday, November 14, 1990, 9 a.m. to 10:30 a.m., Tampa, Florida.

ADDRESSES: Comments may be mailed to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609. The hearings will be held at the following locations:

1. Corpus Christi—Holiday airport, 5549 Leopard street, Corpus Christi, Texas.

2. Kenner—New Orleans Airport Hilton and Conference Center, 901 Airline Highway, Kenner, Louisiana.

3. Mobile—Mobile Hilton, 3101 Airport Boulevard, Mobile, Alabama.

4. Tampa—Omni Tampa Hotel at Westshore, 700 North Westshore Boulevard, Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, Gulf of Mexico Fishery Management Council, 813–228–2815.

Dated: October 2, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–23749 Filed 9–5–90; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commece.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on October 17–19, 1990, at the Oregon Department of Fish and Wildlife Building, Director's Conference room (Fourth floor), 2501 SW. First Avenue, Portland, Oregon. The meeting will begin on October 17 at 8 a.m., and will end on October 19 at 5 p.m.

The GMT will prepare final recommendations for harvest guidelines and quotas for several important groundfish species and develop recommendatons for management measures to achieve the quotas. Additionally the GMT will discuss proposals for managing the 1991 fisheries, including the opening date for the nontrawl sablefish fishery, management of the deepwater complex (Dover sole, sablefish and thornyhead), and measures to manage the Pacific whiting fishery and allocate the whiting harvest among fishermen. The annual status of stocks document, which is a compilation of resource, fishery, economic and management information, will also be prepared at this meeting.

The GMT may also discuss other issues relating to management of the Pacific coast groundfish fisheries. Recommendations and information developed at this meeting will be presented to the Council at its November 14–16, 1990 meeting in Seattle, Washington.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: October 2, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–23708 Filed 10–5–90; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council Public Meetings & Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will meet on October 29 through November 2, 1990, at the Shell Island Resort Hotel; 2700 Lumina Blvd.; Wrightsville Beach, NC; telephone: (919) 256–5050. The Council will discuss snapper/grouper, wreckfish, limited entry, billfish, flounder and other fishery management business. On October 31, 1990, at 1:30 p.m., the Billfish Committee will hold a public hearing on the proposed definition of overfishing for billfish.

A detailed agenda will be available to the public on or about October 15, 1990. For more information contact Carrie R. F. Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: October 2, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–23709 Filed 10–5–90; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade and MidAmerica Commodity Exchange Proposed Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contracts.

SUMMARY: The Chicago Board of Trade (CBT) for applied for designation as a contract market in options on short-term U.S. Treasury note futures. The MidAmerica Commodity Exchange (MCE) has applied for designation as a contract market in options on corn futures and options on U.S. Treasury bond futures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 8, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT short-term U.S. Treasury note option contract, the MCE corn option contract

or the MCE U.S. Treasury bond option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT or MCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commissions headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of he proposed contracts, or with respect to other materials submitted by the CBT or MCE in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on September 28, 1990.

Blake Imel,

Acting Director.

[FR Doc. 90–23683 Filed 10–5–90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 152. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 152 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATES: October 1, 1990.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3810-01-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA:		
ADAK 5/	$ 77	08-01-90
ANAKTUVUK PASS	140	08-01-90
ANCHORAGE		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
ATQASUK	215	08-01-90
BARROW	148	08-01-90
BETHEL	143	03-01-90
BETTLES	110	08-01-90
COLD BAY	125	08-01-90
COLDFOOT	122	08-01-90
CORDOVA	150	03-01-90
DILLINGHAM	114	08-01-90
DUTCH HARBOR-UNALASKA	145	08-01-90
EIELSON AFB		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
ELMENDORF AFB		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
FAIRBANKS		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
FT. RICHARDSON		
05-16--09-15	141	05-16-90
09-16--05-15	130	03-01-90
FT. WAINWRIGHT		
05-15--09-15	124	05-15-90
09-16--05-14	109	03-01-90
HOMER	130	03-01-90
JUNEAU	123	03-01-90
KATMAI NATIONAL PARK	148	08-01-90
KENAI		
05-01--09-30	149	05-01-90
10-01--04-30	127	03-01-90
KETCHIKAN	127	03-01-90
KING SALMON 3/	134	08-01-90
KODIAK	118	03-01-90
KOTZEBUE	153	03-01-90
KUPARUK OILFIELD	127	08-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
ALASKA: (CONT'D)		
MURPHY DOME		
05-15--09-15	$124	05-15-90
09-16--05-14	109	03-01-90
NOATAK	143	04-01-88
NOME	129	03-01-90
NOORVIK	143	04-01-88
PETERSBURG	127	03-01-90
POINT HOPE	160	08-01-90
POINT LAY	179	08-01-90
PRUDHOE BAY-DEADHORSE	121	08-01-90
SAND POINT	103	08-01-90
SEWARD	102	03-01-90
SHUNGNAK	143	03-01-90
SITKA-MT. EDGECOMBE	127	03-01-90
SKAGWAY	127	03-01-90
SPRUCE CAPE	118	03-01-90
ST. MARY'S	100	08-01-90
ST. PAUL ISLAND	115	08-01-90
TANANA	129	03-01-90
TOK	112	03-01-90
UMIAT	160	08-01-90
UNALAKLEET	105	01-01-88
VALDEZ		
05-01--10-31	169	05-01-90
11-01--04-30	128	03-01-90
WAINWRIGHT	165	01-01-88
WALKER LAKE	136	08-01-90
WRANGELL	127	03-01-90
YAKUTAT	110	08-01-90
OTHER 3, 4/	94	08-01-90
AMERICAN SAMOA	102	05-01-89
GUAM	158	10-01-90
HAWAII:		
ISLAND OF HAWAII: HILO	95	08-01-90
ISLAND OF HAWAII: OTHER	106	08-01-90
ISLAND OF KAUAI	158	10-01-90
ISLAND OF KURE 1/	13	05-01-89
ISLAND OF MAUI: KIHEI		
04-01--12-19	135	05-01-89
12-20--03-31	147	12-20-89
ISLAND OF MAUI: OTHER	106	08-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	RATE	EFFECTIVE DATE
HAWAII: (CONT'D)		
ISLAND OF OAHU	$126	05-01-89
OTHER	106	08-01-90
JOHNSTON ATOLL 2/	35	02-01-89
MIDWAY ISLANDS 1/	13	01-01-88
NORTHERN MARIANA ISLANDS:		
ROTA	76	08-01-90
SAIPAN	115	08-01-90
TINIAN	68	08-01-90
OTHER	20	01-01-88
PUERTO RICO:		
BAYAMON		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
CAROLINA		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
FAJARDO (INCLUDING LUQUILLO)		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
MAYAGUEZ	167	08-01-90
PONCE	167	08-01-90
ROOSEVELT ROADS		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
SABANA SECA		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)		
04-16--12-14	150	08-01-90
12-15--04-15	173	12-15-90
OTHER	96	08-01-90
VIRGIN ISLANDS OF THE U.S.		
05-01--11-30	158	05-01-90
12-01--04-30	194	03-01-90
WAKE ISLAND 2/	21	04-01-89
ALL OTHER LOCALITIES	20	01-01-88

BILLING CODE 3810-01-C

Maximum Per Diem Rates for Official Travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees

Footnotes

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Galena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.

Dated: October 2, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-23685 Filed 10-5-90; 8:45 am]

BILLING CODE 3810-O-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 8, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James O'Donnell, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State and Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Recordkeeping burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: October 2, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Application—Preschool Grants Program under the Education of the Handicapped Act.

Frequency: Annually.

Affected Public: States or local governments.

Reporting Burden: Responses—57; Burden Hours—570.

Recordkeeping Burden: Recordkeepers—0; *Burden Hours.*—0.

Abstract: This form will be used by State agencies to apply for funding under the Preschool Grant Program. The Department will use this information to make grant awards.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Descriptive Study of the Family English Literacy Programs.

Frequency: One time.

Affected Public: Individuals or households.

Reporting Burden: Responses—276; *Burden Hours*—154.

Recordkeeping Burden: Recordkeepers—0, *Burden Hours*—0.

Abstract: The study will describe the characteristics of the Family English Literacy Program which lead to increased English language proficiency of parents and the improved academic achievement of children.

[FR Doc. 90-23706 Filed 10-5-90; 8:45 am]

BILLING CODE 4000-1-M

School Dropout Demonstration Assistance Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year (FY) 1991.

SUMMARY: The Secretary of Education proposes to establish absolute priorities for the grant competition to be held in FY 1991 under the School Dropout Demonstration Assistance Program contained in part A of title VI of the Elementary and Secondary Education Act of 1965, as amended. Under the priorities, the appropriated funds would be reserved for two types of broad approaches. Approximately one half of the funds would support projects that focus on restructuring and reform within school clusters. The remaining funds would support projects that focus on targeted programs for at-risk youth. These projects would be coordinated with a Federal evaluation of the program, including an in-depth evaluation of selected projects.

DATES: Comments must be received on or before November 8, 1990.

ADDRESSES: Comments should be addressed to Alicia Coro, Office of Elementary and Secondary Education, room 2071, 400 Maryland Avenue SW.,

Washington, DC 20202–6439; (202) 401–0657.

SUPPLEMENTARY INFORMATION: Programs to reduce the number of students who do not complete their elementary and secondary education have been many and varied. During the past decade, State and local communities have implemented many efforts to improve their schools and reduce the number of school dropouts, and the Department of Education also started two dropout prevention demonstration programs focused on at-risk youth. Notwithstanding the considerable activity undertaken—

(a) The national dropout rate has improved only marginally over the past decade; and dropout rates, particularly for Hispanic youth, remain stubbornly high;

(b) A comprehensive model for effective dropout prevention has not been validated on a national scale, yet research strongly suggests the need for a comprehensive approach; and

(c) Programs tailored to specific problems and needs of drop-out prone students or students who have already dropped out may not be enough when a high school has an extremely high dropout rate. The entire cluster of schools—elementary and middle schools as well as the high school into which they feed—must restructure and reform its operations and raise the expectations for all students before dropout rates will be affected significantly.

The Secretary believes that reserving funds appropriated under the School Dropout Demonstration Assistance Program for projects which focus on the two broad approaches described in this notice will provide important information on their relative effectiveness and provide the opportunity to compare various promising components within the two approaches. Solid, national-level evaluation evidence that comprehensive programs work can provide reliable guidance to States and local communities in designing education programs to help at-risk youth.

Proposed Absolute Priorities

The Secretary proposes to give absolute preference to applications that focus on either one of the following approaches:

(a) Restructuring and reform within school clusters.

Under this priority, applicants may apply for a school cluster—that is, a high school and its feeder elementary and middle schools. Restructuring will require schoolwide change and a proposed project must include at least the following components:

(1) Autonomy for both principals and teachers to determine curriculum and instruction strategies. (This may include activities such as the following: Setting school performance goals, restructuring schedules and patterns for daily instruction, initiating new programs and activities, or evaluating achievement.)

(2) Interesting and challenging curricula that move students along as fast as the capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(3) A school climate where students are made to feel that they are an important and integral part of the school and interaction between students and adults is encouraged. (Implementation strategies may include counseling, mentoring, team teaching, dividing schools into smaller entities, and recognition of students' cultural heritage.)

(4) Systematic monitoring of attendance and follow-up of absences with students and parents.

(5) Alternatives to standard retention practices (such as promotion with special assistance).

(6) Coordination of services to meet at-risk students' multiple needs (through such approaches as case management).

(7) Policies and procedures to ensure communication among schools in the cluster and to facilitate a student's transition from elementary to middle to high schools.

(8) Parent and community involvement (using means such as parent advisory coucils, volunteer groups, or school-based management teams).

(9) Staff training to provide for effective operation of the program.

(b) Targeted programs for at-risk youth.

Under this priority, applicants may apply for grants to support projects that involve comprehensive targeted services for at-risk youth. These projects may include such approaches as special programs for at-risk youth in regular schools, a "school within a school," alternative schools that serve only at-risk youth, or other similar arrangements. In order to qualify for funding under this priority a proposed project must include at least the following components:

(1) Accelerated learning strategies for improving academic performance and interesting and challenging curricula that move students along as fast as their capabilities allow. The curricula must introduce instruction in higher order skills as early as possible and provide context for learning, not merely teach discrete skills with inadequate attention to context or meaning.

(2) Systematic monitoring of attendance and follow-up of absences with parents.

(3) Family outreach that is culturally sensitive and provides information and training to parents on how to support their child's learning both at home and in school.

(4) Counseling services (which may include individual, group, or family counseling).

(5) Career awareness and preparation services (such as career guidance, vocational training, enhancement of employability skills, job internship, and job placement services).

(6) Social support services (such as child care, health services, transportation, and legal aid).

(7) Linkages among feeder elementary, middle schools, and the high school; involvement of business and community groups; and coordination of project activities with those supported by other Federal, State, and local programs.

A proposed project for either approach (i.e., restructuring within school clusters or a targeted program for at-risk youth) must include all of the components identified for that approach. An applicant may, however, propose to give more or less emphasis to individual components, and it is not necessary that all of the identified components be supported with funds under this program. Portions of the proposed project may be supported with other Federal, State, or local funds.

Federal Evaluation

The Department of Education intends to conduct a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. A contract will be competitvely awarded to conduct the evaluation. The evaluation will assess all components of the project, including those paid for with other Federal, State, or local funds. All grantees will be required to cooperate with the national evaluation, which will consist of two parts.

The first part of the evaluation will be a descriptive evaluation that involves collection of data on: (1) The students being served, including socioeconomic background and attendance, achievement, and retention data; (2) the services provided; (3) extent of involvement of parents, business, and community groups; (4) coordination with

other agencies; (5) staff training and qualifications; and (6) status of program implementation. All projects will be required to collect and report data for the descriptive evaluation in collaboration with the national contractor.

The second part will be an outcome evaluation that assesses the effects of the program. Methodology for the outcome evaluation will vary depending on the type of project. Projects that target services on at-risk youth will be evaluated through the establishment of control groups using random assignment or the selection of matched comparison groups. Projects that restructure a cluster of elementary and middle schools and a high school will use a trend analysis methodology, such as interrupted time-series analysis, which will require assemply of data from administrative records for at least five years prior to the project as well as during the project. The data will be collected from both the project schools and either all other schools in the district (for small districts) or a set of similar schools (in large districts). The contractor will start working with projects in preparation for the outcome evaluation as soon as grants are awarded. Implementation of the outcome evaluation will take place in the second year of the program after selection of projects and the establishment of appropriate control/comparison groups.

For the outcome evaluation, the Department will select a number of sites for in-depth study. For those sites, the national evaluator will, as appropriate, establish control/comparison groups or arrange for collection of prior and current administrative records. The National evaluator will also survey student attitudes and teacher attitudes, perceptions, and knowledge in those sites.

Each remaining site will itself contract with local evaluators or use district evaluation staff to conduct an outcome evaluation. The local evaluators will establish control or comparison groups or collect prior and current administrative records. Each site will provide outcome data and summaries to the national evaluation contractor for inclusion in national analyses and reports. Technical assistance will be available from the national contractors to local project directors and evaluators.

In the application, each applicant shall sbmit an assurance that it will collaborate with the national evaluation in collection of descriptive and outcome data. Applicants proposing a program targeted on at-risk students must also indicate their willingness to participate in a random assignment evaluation model, as described below. Applicants proposing to restructure a cluster of schools must indicate their willingness to cooperate with a national or local evaluator in assembly of administrative records on student characteristics such as attendance, retention, and achievement and on school characteristics such as school lunch rates. The records will be needed from project schools and either all other schools in the district if the district is small or a comparable set of schools if the district is large.

Random assignment

The evaluation of targeted projects for at-risk youth will involve the establishment of control groups through random assignment or the selection of matched comparison groups. The appropriate method of selecting a control or matched comparison group for the evaluation of targeted projects for at-risk youth will be determined by the Department based on program characteristics.

Random assignment of potentially eligible participants to the program and the control group will be the preferred method of evaluation for projects in which it is appropriate and feasible. Random assignment must not affect the total number of students served by the project, only the method by which eligible applicants are accepted into the program. In particular, it will not be appropriate in sites where all eligible students can be served. Random assignment will take place after potentially eligible participants have been identified and recruited. Individuals in the control group will receive no services from the project funded under this program, but will be free to receive other available services. If the Department of Education decides that random assignment is not appropriate for a project, matched comparison groups will be selected by identifying nonparticipants who have characteristics that are similar to those of the program participants.

The independent evaluator under contract to the Department will work closely with grantees in gaining their cooperation, choosing the control or comparison groups, and providing assistance in conducting the activities associated with the evaluation.

Evaluation by the Grantee

The Secretary reminds prospective applicants that the requirements for self-evaluation in 34 CFR 75.590 apply to this program. An applicant must submit an evaluation plan to address these requirements as part of its application, which will compliment the activities conducted through the national evaluation. An applicant may propose additional local evaluation activities to meet local information needs as well. These evaluation plans will only be implemented upon review and approval by the Department of Education. Once a grant is awarded, the grantee will be expected to submit to the Department a copy of the report from any local evaluation implemented as part of the dropout demonstration.

Invitation to Comment

The Secretary invites public comment on the merits of the proposed priorities and the Federal evaluation, including suggested modifications. Final priorities and evaluation will be established on the basis of public comment and other relevant Departmental considerations, and will be announced in a notice in the **Federal Register**. This notice of proposed priorities does not solicit applications, and Department of Education staff will not review concept papers or preapplications. The publication of the proposed priorities does not bind the Federal government to fund projects in these areas, except as otherwise directed by statute. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of applications.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in room 2049, FOB #6, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 3241.

(Catalog of Federal Domestic Assistance Number 84.201, School Dropout Demonstration Assistance Program)

Dated: October 2, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-23705 Filed 10-5-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Carnegie Natural Gas Co., Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that on September 27, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following substitute revised tariff sheets

to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Tenth Revised Sheet No. 8
Substitute Tenth Revised Sheet No. 9
Substitute First Revised Sheet No. 10
Substitute First Revised Sheet No. 23

Carnegie states that, pursuant to §154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483–A, it is proposing an Out-of-Cycle PGA primarily to reflect recent significant rate changes in the cost of spot gas supplies. The revision also reflects the ACA surcharge rate proposed by Carnegie's pipeline supplier to become effective on October 1, 1990. The revised rates are proposed to become effective October 1, 1990, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ90–8–63–000: a $.1558 per Dth increase in the commodity components of its LVWS, CDS, and LVIS Rate Schedules; no change in the demand charges; and no change in the DCA component. Carnegie's Standby Adjustment stated in this filing is $.1220 per Dth.

Carnegie is also including in this filing the revisions to its ACA surcharge rates in accordance with the Commission's September 26, 1990 order in Docket No. RM87–3–000, *et al.* (including Carnegie's filing in Docket No. TM91–1–63–000). These sheets reflect an ACA surcharge rate of $.0022 per Mcf in accordance with the September 26, 1990 order.

Carnegie states that copies of its filing were served on all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23691 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–24–001]

Equitrans, Inc.; Proposed Changes In FERC Gas Tariff

October 1, 1990.

Take notice that Equitrans, Inc. (Equitrans) on September 28, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, effective October 1, 1990:

Substitute Seventeenth Revised Sheet No. 10

Equitrans states that the foregoing tariff sheets are being filed in accordance with the Commission's Order and Staff request the rates filed in Docket No. TM91–1–24–000 have been revised to comply with the conditions of the August 31, 1990 Order. The Order directed Equitrans to refile its tariff sheets to reflect back to the commodity portion of its rates the portion of affiliated producer-marketer demand charges in excess of that permitted under the test described in the Commission's Order and to recalculate its surcharge rates using the correct monthly interest rates factors.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–23692 Filed 10–5–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA90–1–24–003, RP90–162–001]

Equitrans, Inc.; Proposed Change In FERC Gas Tariff

October 1, 1990.

Take notice that on September 28, 1990, Equitrans, Inc. ("Equitrans") tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of September 1, 1990 subject to refund:

Substitute Sixteenth Revised Sheet No. 10
Substitute Eighth Revised Sheet No. 34
Substitute Fourth Revised Sheet No. 177C

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's "Order Accepting And Suspending Tariff Sheets Subject To Refund And Conditions And Convening A Technical Conference" ("Order") issued herein on August 31, 1990. Also contained in the compliance filing are revised Schedules G1, A1, C1, C2 and D1, which correct errors discussed in appendix A of the Order. A new magnetic tape reflecting these corrections was also filed. Working papers reflecting back to the commodity portion of Equitrans' rates the portion of affiliated producer-marketer demand charges in excess of that permitted under the Order were also filed, as well as a report reflecting Equitrans' purchasing practices for producer demand charges, including the treatment of affiliates. Equitrans also filed supporting working papers showing the impact on costs of using standby service in lieu of Texas Eastern Transmission Corporation's system supply. It filed an explanation regarding the absence from the PGA filing of out-of-period billing adjustments. Equitrans corrected Schedule A1 to reflect both a demand and a commodity rate for producer purchases. It corrected problems on Fourth Revised Sheet No. 177C concerning the vagueness of the phrase "projecting the deficiency" and an incorrect reference to the Commission's Regulations concerning carrying costs. It also corrected the calculation of it's Adjustment Rate Change tariff sheet to include the Cumulative Adjustment column in its Total Effective Rate column.

Equitrans states that a copy of its compliance filing has been served upon its purchasers, interested state commissions, and the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed

on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23693 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-36-000]

Pacific Gas Transmission Co., Annual Charge Adjustment

October 1, 1990.

Take notice that on September 28, 1990, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance certain tariff sheets to be included in its Substitute First Revised Volume No. 1, and Original Volume No. 1-A of its FERC Gas Tariff.

The above tariff sheets have been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's order of September 26, 1990 in Docket No. RM87-3-000 et al. PGT has requested waiver of the Commission's regulations to permit it to adopt the changes in the ACA rate on October 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23694 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-18-000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that on September 28, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

Sixth Revised Twenty-eighth Revised Sheet No. 10
Sixth Revised Twenty-eighth Revised Sheet No. 10A
Fourth Revised Ninth Revised Sheet No. 11
Fourth Revised Original Sheet No. 11A
Fourth Revised Original Sheet No. 11B

Original Volume No. 2-A

Fifth Revised Sheet No. 14

The proposed tariff sheets are being filed to restate the Commodity Take-or-Pay (TOP) Surcharge for the remaining six months (November 1, 1990, through April 31, 1991) in Texas Gas's Second Annual Recovery Period. The new Commodity TOP Surcharges are calculated using the cost and volumetric determinants reflected in the filed base tariff rates effective November 1, 1990, in Texas Gas's filing in Docket No. RP90-104, as stated in §§ 26.4(c) and 23.4(c) of the General Terms and Conditions in Texas Gas's Original Volume No. 1 and Original Volume No. 2-A, respectively.

Texas Gas reserves the right to revise this filing due to any change in Order No. 500 implemented by the Commission or any Court decision. Additionally, Texas Gas agrees to supplement this filing as necessary to reflect any Commission or Court final decisions on any outstanding issues in the original TOP dockets. Likewise, Texas Gas will subsequently adjust all TOP commodity surcharge collections during this period to reflect any differences in the TOP surcharge that may result from the final resolution of the cost and volumetric issues in Docket No. RP90-104.

Texas Gas requests an effective date of November 1, 1990, for the proposed tariff sheets. Texas Gas further states that it has served copies of this filing upon the company's sales and transportation customers and interested state commissions.

Texas Gas will maintain copies of this filing at its Owensboro, Kentucky, offices for public inspection during regular business hours.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Secs. 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell

Secretary.

[FR Doc. 90-23695 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-18-000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

October 1, 1990.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on September 28, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Twenty-eighth Revised Sheet No. 10
Fifth Revised Twenty-eighth Revised Sheet No. 10A
Third Revised Ninth Revised Sheet No. 11
Third Revised Originial Sheet No. 11A
Third Revised Originial Sheet No. 11B

Texas Gas states that these tariff sheets reflects changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective November 1, 1990. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.4097 per MMBtu, a D-1 demand rate decrease of $.(44) per MMBtu, and a D-2 demand rate decrease of $(.0099) per MMBtu from the rates set forth in the quarterly PGA filed July 20, 1990 (Docket No. TQ90-3-18-001). The instant filing reflects a $.5104 per MMBtu commodity rate increase from the proposed rates effective August 1, 1990 (Docket No. TF90-10-18).

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-23696 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-49-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Admustment Filing

October 1, 1990.

Take notice that on September 28, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Twenty-ninth Revised Sheet No. 10

Original Volume No. 1-A

Twenty-second Revised Sheet No. 11
Twenty-eighth Revised Sheet No. 12
Fourteenth Revised Sheet No. 97A
Eighth Revised Sheet No. 275
Seventh Revised Sheet No. 275A
Seventh Revised Sheet No. 276
Seventh Revised Sheet No. 277

Original Volume No. 1-B

Seventeenth Revised Sheet No. 10
Seventeenth Revised Sheet No. 11

Original Volume No. 2

Thirty-first Revised Sheet No. 10
Second Revised Sheet No. 10A
Twenty-third Revised Sheet No. 11B

The proposed effective date of the tariff sheets is November 1, 1990.

Williston Basin states that Twenty-ninth Revised Sheet No. 10 (First Revised Volume No. 1) and Thirty-first Revised Sheet No. 10 (Original Volume No. 2) reflect an increase in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1 of 12.621 cents per dkt as compared to that contained in the Company's June 1, 1990 PGA filing in Docket No. TA90-1-49-000, which became effective August 1, 1990.

Williston Basin Further states that Twenty-second Revised Sheet No. 11, Twenty-eighth Revised Sheet No. 12 and Fourteenth Revised Sheet No. 97A (Original Volume 1-A), Seventeenth Revised Sheet Nos. 10 and 11 (Original Volume No. 1-B), Thirty-first Revised Sheet No. 10 and Twenty-third Revised Sheet No. 11B (Original Volume No. 2) reflect an increase of 0.274 cents per dkt in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's June 1, 1990 filing in Docket No. TA90-1-49-000. Such increase in the fuel reimbursement charge is a result of the changes in Williston Basin's average cost of purchased gas.

In addition, Williston Basin states that Eighth Revised Sheet No. 275 and Seventh Revised Sheet Nos. 275A, 276 and 277 (Original Volume No. 1-A) have been submited to update the "Index of Purchasers". Second Revised Sheet No. 10A (Original Volume No. 2) has been submitted to cancel the Interim Billing Determinants applicable to Rate Schedule X-3 consistent with a Commission Order issued August 17, 1990 in Docket No. RP90-148-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 10, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 90-23697 Filed 10-5-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: Wednesday, October 24, 1990, from 9:30 a.m. to 5:30 p.m.

Place: Holiday Inn, International Ball Room O'Hare IV, 5440 North River Road, Rosemont, Illinois.

Contact: Cathy Hanlin, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20585, (301) 353-3613.

Purpose of Committee: To advise the Department of Energy and the National Science Foundation on the scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

- Discussions of the NSAC Subcommittee Reports and NSAC Recommendations on Low Energy Heavy Ion Facilities.
- Public comment.
- Other business.

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Cathy Hanlin at the address or telephone number listed above.

Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 3, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90-23777 Filed 10-5-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-77-NG]

ICG Energy Marketing, Inc.; Application for Blanket Authorization To Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 31, 1990, of an application filed by ICG Energy Marketing, Inc. ("ICG Energy Marketing") for blanket authorization to export 2 Bcf of natural gas to Canada over a two-year term beginning on the date of first export.

ICG Energy Marketing intends to use existing facilities of U.S. pipelines for the transportation of the gas supplies to

be exported. The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., November 9, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestral Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249.

Dianne Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ICG Energy Marketing, a corporation organized and existing under the laws of the State of Delaware, is a wholly owned subsidiary of Canadian Hydrocarbons Marketing, Inc., which in turn is a subsidiary of ICG Utilities (Canada) Ltd. Its ultimate parent corporation is Westcoast Energy Inc., a company incorporated pursuant to the laws of Canada. The company's principal place of business is in Calgary, Alberta, Canada.

ICG Energy Marketing was formed for the purpose of marketing natural gas in Canada and the United States. The company intends to export natural gas, for its own account or as agent for suppliers or purchasers, for spot or short-term sales to Canadian purchasers including, but not limited to, commercial and industrial end-users and local distribution companies, or for re-import under the applicant's existing blanket import authority for sale to U.S. purchasers. The terms of each transaction, including price and volume, will depend on the market demand for natural gas and will be structured to meet competition in the market place.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed export authority will advance U.S. goals to reduce trade barriers and to encourage the operation of market forces to achieve a more competitive and efficient distribution of goods between the United States and Canada. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import/export is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and exported and the purchase price in order to facilitate monitoring of the operation of DOE's natural gas import program.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ICG Energy Marketing's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 29, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–23775 Filed 10–5–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–65–NG]

United Mineral Resources, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting United Mineral Resources, Inc. (United) blanket authorization to export up to 73 Bcf of natural gas to Mexico over a two year period commencing on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 29, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–23776 Filed 10–5–90; 8:45 am]

BILLING CODE 6450–01–M

FARM CREDIT ADMINISTRATION

Performance Review Board; Designation of Members

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: In accordance with the provisions in title 5, U.S.C. 4314(c)(4), the Farm Credit Administration hereby publishes a roster of the names of the executives who may be designated as members of the Agency's Performance Review Board(s). The roster is as follows:

1. Mary Kay Thatcher;
2. David C.Baer;
3. Anne E. Dewey;
4. Michael A. Bronson; and
5. William L. Robertson.

Dated October 1, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 90–23702 Filed 10–5–90; 8:45 am]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1826]

Petitions For Reconsideration and Clarification and Application for Review of Actions in Rule Making Proceedings

October 4, 1990.

Petitions for reconsideration and clarification and an application for review have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions and the application must be filed on or before October 25, 1990. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Formulation of Policies And Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process. (BC Docket No. 81–742). *Number of petitions filed:* 1.

Subject: Access to Telecommunications Equipment and Services by the Hearing Impaired and Other Disabled Persons. (CC Docket No. 87–124). *Number of petitions filed:* 1.

Subject: Amendment of §§ 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of Commission's Processes. (MM Docket No. 87–314). *Number of petitions filed:* 1.

Subject: Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network * * *. (CC Docket No. 88–57, RM–5643). *Number of petitions filed:* 9

Subject: Amendment of parts 2 & 87 of the Commission's Rules to Permit the Aviation Services to Use Frequencies in the 136–137 MHz Band. (Gen. Docket No. 89–295, RM's 6620 & 6649). *Number of petitions filed:* 1.

Subject: Regulations Concerning Indecent Communications by Telephone. (Gen. Docket No. 90–64). *Number of petitions filed:* 1.

Application for Review

Subject: Review of §§ 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network * * *. (CC Docket No. 88–57, RM–5643). *Number of petitions filed:* 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–23787 Filed 10–5–90; 8:45am]

BILLING CODE 6712–01–M

Wisconsin Broadcast Communications Foundation et al; Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for five new FM stations:

Applicant City/State	File No.	M Docket No.
A. Wisconsin Broadcast Communications Foundation, Inc.; Verona, WI.	BPED–881214MD.	90–423
B. Janice and Ronald Fedler, General Partners; Verona, WI.	BPH–881214MK...	
C. Verona Parque Broadcasting Co.; Verona, WI.	BPH–881215MC...	
D. Soncomm, Inc.; Verona, WI.	BPH–881215ND...	
E. Skywave Communications Corporation; Verona, WI.	BPH–881215NF...	
F. Key Communications, Inc.; Verona, WI.	BPH–881215NH...	
G. Roger Kluge; Verona, WI.	BPH–881215NH...	
Issue Heading and Applicants 1. Noncommercial Educational Qualifications A 2. Air Hazard, B 3. Comparative, A11 4. Ultimate, A11		
II.		
A. Gary P. Savoie; Walpole, New Hampshire.	BPH–881215NB...	90–421
B. Bruce M. Lyons; Walpole, New Hampshire.	BPH–881216NT...	
Issue Heading and Applicants 1. See Appendix, B 2. See Appendix, B 3. Air Hazard, B 4. Comparative, A, B 5. Ultimate, A, B		
III.		
A. Daniel Cunningham; Wauseon, OH.	BPH–880914MI.....	90–420
B. Steamboat Radio Partners; Wauseon, OH.	BPH–880914MK...	
C. PRYD Limited Partnership; Wauseon, OH.	BPH–880915MW..	
D. Conquest Broadcasting, Inc.; Wauseon, OH.	BPH–88091ML.....	
Issue heading and applicants		

Applicant City/State	File No.	MM Docket No.
1. Air Hazard, D 2. Comparative, A through D 3. Ultimate, A through D		
IV.		
A. Family Communications, Inc.; Roland, OK.	BPH-880727MA...	90-428
B. Sequoyah Communications Corporation; Roland, OK.	BPH-8807277MD.	
C. Linda Blair; Roland, OK.	BPH-860727NG...	
Issue heading and applicants 1. Comparatie, A-C 2. Ultimate, A-C		
V.		
A. Ohana Broadcasting; Kahalu'u, HI.	BPH-890503MK...	90-427
B. Shaka Broadcasting, Limited Partnership; Kahalu'u, HI.	BPH-890504MG...	
Issue heading and applicant 1. See Appendix, A 2. Comparative, Both applicants 3. Ultimate, Both applicants		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division.

Appendix (Walpole, New Hampshire)

1. To determine whether B (Lyons) was an undisclosed party-in-interest in Maxine Snow's Lebanon, New Hampshire application (File No. BPH-880126NX) in comparative proceeding MM Docket 90-73.

2. To determine, from the evidence adduced pursuant to Issue 1 above, whether B (Lyons) possesses the basis qualifications to be a licensee of the facilities sought herein.

Appendix (Kahalu 'u, Hawaii)

1. In regard to Linda Dee Anderson Manown and Austin S. Vali, both of whom are principals of Ohana Broadcasting and were principals of The Pleiades Group, a dismissed applicant for a new FM station at Pearl City, Hawaii, MM Docket No. 87-516:

(a) To determine, in light of the facts and circumstances surrounding the issues raised in the Pearl City, Hawaii, proceeding, whether The Pleiades Group willfully and repeatedly failed to report in its application and other filings facts of decisional significance.

(b) To determine whether The Pleiades Group falsely certified the information in its Pearl City application with regard to its principals and its financial support to build and operate the station.

(c) To determine whether The Pleiades Group was financially qualified to build and operate the Pearl City facilities.

(d) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Linda Dee Anderson Manown and Austin S. Vali and thus Ohana Broadcasting possess the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-23788 Filed 10-5-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thrusday, October 25. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Expedited Funds Availability.* Discussion led by the Depository and Delivery Systems Committee on the experience of financial institutions in implementing the permanent funds availability schedule, and the effect on consumers.

2. *Affordable Housing.* Briefings on the status of the affordable housing programs administered by the Federal Housing Finance Board and the Resolution Trust Corporation.

3. *New CRA Process.* Discussion led by the Community Reinvestment Act Committee on members' experiences with and impressions of the new CRA process; and on the committee's review of a sample of the publicly available CRA performance evaluations prepared by examiners since July 1, 1990.

4. *Proposal on Electronic Benefits Transfer.* Briefing on a staff proposal being developed to address issues regarding electronic benefits transfer (EBT) systems using the existing framework of Regulation E (Electronic Fund Transfers), with a presentation by an agency representative from Maryland regarding that state's pilot program for EBT. (Under EBT systems, government agencies use electronic, rather than paper-based, systems to disburse benefits, such as cash or food stamps, to recipients.)

5. *Mortgage Lending Patterns.* Discussion led by the Community Affairs and Housing Committee on the possible use of testers by the federal financial regulators as a means of detecting illegal discrimination.

6. *Members Forum.* Presentation of individual Council members' views regarding the current availability of commercial and real estate credit in their local markets.

7. *Departing Remarks.* Remarks by Council members whose terms expire at year-end concerning their experience on the Council and suggestions for its future operation.

8. *Committee Reports.* Progress reports from Council Committees on their work and plans for 1991.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Monday, October 22, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Wahington, DC 20551, 202-452-2412. Telecommunications Device for the Deaf (TDD) users may contact

Earnestine Hill or Dorothea Thompson, 202–452–3544.

Board of Governors of the Federal Reserve System, October 2, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–23745 Filed 10–5–90; 8:45 am]

BILLING CODE 6210–01–M

Guaranty Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The Company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question of whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Guaranty Bancshares, Inc.*, Mount Pleasant, Texas; to become a bank holding company by acquiring Guaranty Financial Corp., Wilmington, Delaware, and Guaranty Bancshares, Inc., Mount Pleasant, Texas (Going Concern), and thereby indirectly acquire Guaranty Bank, Mount Pleasant, Texas, and The Talco State Bank, Talco, Texas. In connection with this application, Guaranty Financial Corp. has also applied to become a bank holding company.

Guaranty Bancshares, Inc. and Guaranty Financial Corp. have also applied to acquire Guaranty Leasing Company, Inc., Mount Pleasant, Texas, and thereby engage in full pay-out personal leasing pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in East Texas.

Board of Governors of the Federal Reserve System, October 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23744 Filed 10–5–90; 8:45 am]

BILLING CODE 6210–01–M

Gary M. Traughber, et al., Change in Bank Control Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90–20326) published at page 35359 of the issue for Wednesday, August 29, 1990.

Under the Federal Reserve Bank of St. Louis, the entry for Gary M. and Frances S. Traughber is amended to read as follows:

A. Federal Reserve Bank of St. Louis, (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri, 63166):

1. *Gary M. and Frances S. Traughber,* Elkton, Kentucky; Evelvyn H. Traughber, Elkton, Kentucky; Brent Hill Traughber, Elkton, Kentucky; and Edwing Berkley Traughber, Metairie, Louisiana, to acquire an additional 4.63 percent of the voting shares of Elkton Bancorp, Inc., Elkton, Kentucky, for a total of 20.30 percent, and thereby indirectly acquire Elkton Bank & Trust Company, Elkton, Kentucky.

Comments on this application must be received by October 29, 1990.

Board of Governors of the Federal Reserve System, October 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–23746 Filed 10–5–90; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Reviw

AGENCIES: General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the General Services Administration Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request for expedited review and approval pursuant to 5 CFR 1320.18 of a new information collection requirement concerning customer views of the FAR. OMB approval is requested within 20 days.

ADDRESS: Send comments to Mr. Stephen Holden, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 501–4547.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* The proposed survey is intended to solicit input from a samplying of diverse users of the FAR concerning how well the FAR meets their needs as well as identify approaches for improving the FAR.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1000*; responses per respondent, *1*; total annual responses, *1000*; preparation hours per response, *.5*; and total response burden hours, *500*.

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–00XX, Customer Survey Concerning the Federal Acquisition Regulation.

Dated: October 1, 1990

Sharon A. Kiser,

FAR Secretariat.

Customer Survey—Federal Acquisition Regulation (FAR)

GSA, U.S. General Services Administration, Office of Acquisition Policy

Dear Participant:

The Federal Acquisition Regulation (FAR), published in 1984, continues to evolve as a result of new legislation, Executive Branch initiatives, and requests from participants in the Federal acquisition process. The U.S. General Services Administration (GSA) believes that this is an appropriate time to consider how the FAR may more efficiently and effectively serve our customers in Government and industry.

To determine if improvements are needed in the FAR, GSA—together with the Civilian Agency Acquisition Council (CAAC)—is conducting a survey of FAR customers. In order to evaluate the FAR's effectiveness, we need to know whether our customers are satisfied, and if they are not, what aspects of the FAR need improvement.

You can assist us in evaluating the FAR by completing the enclosed survey, which we anticipate will take about 30 minutes. We would appreciate the return of the completed survey within three weeks of your receipt.

The responses to the survey will be reviewed to evaluate the need for any major or specialized revisions to the FAR. Your response us confidential and will not be shared with your supervisor. In order to allow for follow-up on comments on the survey, it would be helpful if you furnished your name and telephone number. However, that information is purely voluntary.

Comments

Comments are encouraged whenever appropriate, and space has been provided within certain answer blocks for narrative responses. Other comments, recommendations or suggestions are welcome and should be included at the end of the survey.

Returning Survey

Once you have completed the survey, simply staple, and mail the entire package back to us. It is self-addressed and postage paid.

Meetings

GSA, in conjunction with the National Contract Management Association (NCMA) and Federal agencies, will be conducting a series of meetings with industry and Government representatives for the purpose of discussing FAR improvement. We welcome your participation at such meetings.

We appreciate your interest and participation in improving the FAR.

Richard H. Hopf III,

Associated Administrator for Acquisition Policy.

General

1. To what extend do you use the FAR?

a. [ ] Extensively.
b. [ ] Moderately.
c. [ ] Rarely.
d. [ ] Not At All.

2. For what purposes do you use the FAR?

a. [ ] Acquisition policies applicable to Government.
b. [ ] Acquisition policies applicable to Government contractors.
c. [ ] Compilation of solicitation provisions and contract clauses.
d. [ ] Procedural guidance.
e. [ ] Easy reference to other relevant regulations (e.g., labor regulations, SBA size standards).
f. [ ] An educational tool.
g. [ ] Other. (please specify.)

3. Please identify the tasks you perform which require you to use the FAR: (check all that apply.)

a. [ ] Procurement request preparation.
b. [ ] Solicitation preparation.
c. [ ] Evaluation of bids/offers.
d. [ ] Price/cost analysis.
e. [ ] Small purchases.
f. [ ] Contract administration.
g. [ ] Review of acquisition regulatory issues.
h. [ ] Furnishing advice on acquisition issues.
i. [ ] Preparation of proposals.
j. [ ] Preparation for contract negotiations.
k. [ ] Termination procedures.
l. [ ] Consideration of protest, dispute and appeal issues.
m. [ ] Other. (please specify.)

4. Does the FAR meet your needs?

a. [ ] All of the time.
b. [ ] Generally.
c. [ ] Occasionally.
d. [ ] Seldom.
e. [ ] Never.
f. [ ] No opinion.

5. How could the FAR better serve your needs? (check all that apply.)

a. [ ] Be more clearly written.
b. [ ] Be less complex.
c. [ ] Provide more guidance.
d. [ ] Permit more discretion.
e. [ ] Be Less ambiguous.
f. [ ] Be less legalistic.
g. [ ] Be better organized.
h. [ ] Provide more examples or illustrations.
i. [ ] Provide a more streamlined method for disseminating FAR changes.
j. [ ] No changes needed.
k. [ ] Other. (please specify.)

6. Which statement is most often true?

a. [ ] After reading the FAR, I have a high level of confidence that I know the Governmentwide policy before I select a course of action; or
b. [ ] After reading the FAR, I must seek the advice of others to determine what the Governmentwide policy is before I select a course of action.

7. To what extent do you believe the FAR is ambiguous or confusing?

a. [ ] Never.
b. [ ] Rarely.
c. [ ] Occasionally.
d. [ ] Generally.
e. [ ] Totally.
f. [ ] No opinion.

8. Please identify any FAR coverage (e.g., Subpart 25.2) which you believe is ambiguous or confusing.

9. To what extent do you believe the FAR is overly detailed?

a. [ ] Never.
b. [ ] Rarely.
c. [ ] Occasionally.
d. [ ] Generally.
e. [ ] Almost always.
f. [ ] No opinion.

10. Please identify any FAR coverage (e.g., Subpart 25.2) which you believe is overly detailed.

11. To what extent do you believe the FAR provides insufficient coverage?

a. [ ] Never.
b. [ ] Rarely.
c. [ ] Occasionally.
d. [ ] Generally.
e. [ ] Almost always.
f. [ ] No opinion.

12. Please identify any FAR coverage (e.g., Subpart 25.2) which you believe is insufficient.

13. To what extent does the FAR provide flexibility to apply sound business judgment in the award and administration of contracts?

a. [ ] Too much.
b. [ ] About right.
c. [ ] Too little.
d. [ ] No opinion.

14. If your answer to question 13 is that the FAR provides too little flexibility, please identify whether you believe this results from statutory or regulatory requirements.

a. [ ] Statutory.
b. [ ] Regulatory.
c. [ ] Both statutory and regulatory.
d. [ ] No opinion.

15. How would you characterize the authority levels in the FAR for review or approval of specified actions?

		Generally too high a.	About right b.	Generally too low c.	No opinion d.
15.1	Dollar level	[ ]	[ ]	[ ]	[ ]
15.2	Organizational level	[ ]	[ ]	[ ]	[ ]

16. Please cite any examples where you believe the authority level is:

16.1 Too high_____.

16.2 Too low_____.

Structure

17. Which most accurately reflects your view with respect to the current FAR structure and organization?

a. [ ] Should be retained so familiarity with locations is not lost.

b. [ ] Should be modified as needed to improve the utility of the FAR.

c. [ ] No opinion.

18. Do you favor reorganizing the FAR to separate policy from procedural guidance?

a. [ ] Yes.

b. [ ] No.

c. [ ] No opinion.

19. Is the FAR easy or difficult to use?

a. [ ] Very easy.

b. [ ] Easy.

c. [ ] Difficult.

d. [ ] Very difficult.

e. [ ] No opinion.

20. When you need to locate FAR coverage on a specific topic, are you able to locate the desired material in a reasonable amount of time?

a. [ ] Yes.

b. [ ] Generally.

c. [ ] Occasionally.

d. [ ] Seldom.

e. [ ] No.

f. [ ] No opinion.

21. Does the topic generally appear in the locations at which you expect to find them?

a. [ ] Always.

b. [ ] Usually.

c. [ ] Sometimes.

d. [ ] Rarely.

e. [ ] Never.

f. [ ] No opinion.

22. How would you characterize the newly formulated FAR index in terms of assisting you in locating material in the FAR?

a. [ ] Very useful.

b. [ ] Useful.

c. [ ] Adequate.

d. [ ] Not useful.

e. [ ] Do not use.

23. How could the FAR index be made more useful?

a. [ ] Include more topics in the index.

b. [ ] Include fewer topics in the index.

c. [ ] Include page references.

d. [ ] Provide access to a computerized search capability for locating topics.

e. [ ] Adequate as written.

f. [ ] Other (please specify) _____.

24. When you need to determine which provisions or clauses are applicable to a particular acquisition, do you use the FAR provision and clause matrix?

a. [ ] Very often.

b. [ ] Often.

c. [ ] Occasionally.

d. [ ] Seldom.

e. [ ] Never.

f. [ ] Do not use.

25. Using the FAR provision and clause matrix, can you readily identify the applicable provisions/clauses for specific types of contracts and methods of contracting?

a. [ ] Yes.

b. [ ] No.

c. [ ] Do not use.

26. Do you consider the new FAR matrix to be:

a. [ ] Very useful.

b. [ ] Useful.

c. [ ] Of little value.

d. [ ] Of no value.

e. [ ] Do not use.

27. In the 1984 edition of the FAR each provision/clause in part 52 was preceded by a "preface" that indicated when the provision/clause was to be used. An editorial decision was made to eliminate such prefaces in order to streamline the FAR. The original and current approach may be compared by referring to the prefaces at FAR 52.207–2 and 52.207–3. Do you believe that the elimination of such information:

a. [ ] Streamlines the coverage, thus making the FAR easier to use.

b. [ ] Requires the FAR user to repeatedly research the provision/clause prescriptions in the FAR text, thus making the FAR more difficult to use.

c. [ ] Is desirable because the original prescriptions which were located with the provisions and clauses in FAR part 52 were not all inclusive.

d. [ ] No opinion.

Content

28. Currently, the FAR includes coverage of a topic if it is applicable to more than one agency. This practice:

a. [ ] Makes the FAR more useful.

b. [ ] Unnecessarily clutters the FAR.

c. [ ] No opinion.

29. Currently the FAR includes the substance of statutory requirements and agency regulations pertaining to contracting (e.g., labor regulations, SBA size standards). Would you prefer that such substance be included in future editions of the FAR or that reference to the statutes and regulations be substituted?

a. [ ] Continue substance.

b. [ ] Include references only.

c. [ ] No opinion.

30. Please characterize the usefulness of FAR coverage when you:

		Very useful a.	Useful b.	Ade-quate c.	Not useful d.	I do not per-form e.
30.1	Plan acquisitions	[ ]	[ ]	[ ]	[ ]	[ ]
30.2	Determine method of acquisition	[ ]	[ ]	[ ]	[ ]	[ ]
30.3	Determine contract type	[ ]	[ ]	[ ]	[ ]	[ ]
30.4	Prepare solicitations	[ ]	[ ]	[ ]	[ ]	[ ]
30.5	Evaluate bids/offers	[ ]	[ ]	[ ]	[ ]	[ ]
30.6	Select sources	[ ]	[ ]	[ ]	[ ]	[ ]
30.7	Perform price/cost analyses	[ ]	[ ]	[ ]	[ ]	[ ]
30.8	Negotiate prices	[ ]	[ ]	[ ]	[ ]	[ ]
30.9	Administer contracts	[ ]	[ ]	[ ]	[ ]	[ ]
30.10	Other (specify)	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]

31. How would you rate coverage in the FAR as guidance for acquiring:

		Very useful a.	Useful b.	Ade-quate c.	Not useful d.	I do not per-form e.
31.1	Supplies	[ ]	[ ]	[ ]	[ ]	[ ]
31.2	Services	[ ]	[ ]	[ ]	[ ]	[ ]
31.3	Construction	[ ]	[ ]	[ ]	[ ]	[ ]
31.4	Architect-engineering	[ ]	[ ]	[ ]	[ ]	[ ]
31.5	Research and development	[ ]	[ ]	[ ]	[ ]	[ ]
31.6	Small purchases	[ ]	[ ]	[ ]	[ ]	[ ]
31.7	Utilities	[ ]	[ ]	[ ]	[ ]	[ ]
31.8	Other (specify)	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]
	_____	[ ]	[ ]	[ ]	[ ]	[ ]

32. Does the FAR provide adequate coverage of socio-economic requirements (e.g., small business set-asides, subcontracting with small and disadvantaged businesses, contracting with the Small Business Administration under the 8(a) program)?
a. [ ] Yes.
b. [ ] No.
c. [ ] No opinion.

33. Please cite any examples where you believe the coverage of socio-economic programs is inadequate.

_____

_____

34. Are there any additional subjects that should be covered in the FAR?
[ ] a. Yes
[ ] b. No
[ ] c. No opinion

35. If yes to question 34, please specify subjects:

_____

_____

Changes

36. Are Federal Acquisition Circulars (FACs), changes to the FAR, issued too frequently?
[ ] a. Yes
[ ] b. No
[ ] c. No opinion

37. Future FACs are expected to be issued on a quarterly basis in order to assist the contracting community by reducing the need to frequently implement regulatory changes. An exception to the schedule would be statutory changes with short leadtimes. Fewer FACs will be issued each year, but each one is apt to be more voluminous. Are you in favor of this approach?
[ ] a. Yes
[ ] b. No
[ ] c. No opinion

38. FACs are generally effective 30 days after publication. Do you usually receive your copy of a FAC:
a. [ ] In a timely manner
b. [ ] Right before it becomes effective.
c. [ ] Shortly after it becomes effective.
d. [ ] 30 days or more after it becomes effective.
e. [ ] Do not have a personal copy.
f. [ ] Not aware of how to obtain a personal copy.

39. At the beginning of each FAC there is a brief synopsis of each subject covered in the FAC. Do you believe that these explanations are:
a. [ ] Useful and informative
b. [ ] Too brief to be of real benefit
c. [ ] Unnecessary material.

40. Should the FACs specifically state how each change should be implemented with respect to solicitations and contracts (i.e., does it apply to solicitations issued or contracts awarded)?
[ ] a. Yes
[ ] b. No
[ ] c. No opinion

41. Do you believe that publishing instructional material (e.g., training materials) with the FAC would be useful?
[ ] a. Yes
[ ] b. No
[ ] c. No opinion

42. Do you believe that including illustrations, examples, tables, charts, etc. would make the FAR more readily understandable?
[ ] a. Yes
[ ] b. No
[ ] c. No opinion

43. Do the existing standard and optional forms prescribed in FAR Part 53 meet your needs?
[ ] a. Yes
[ ] b. No
[ ] c. No opinion

44. If your answer is no to question 43, please provide specifics.

_____

_____

Automation

45. In what form do you use the FAR?
[ ] a.
[ ] b.
[ ] c.
[ ] d.
Hard copy test only
Computerized version only
Both hard copy text and computerized version
No opinion.

46. Are you interested in using a computerized version of the FAR?
[ ] a. Yes
[ ] b. No
[ ] c. Do not know

47. How often would you use a computerized version of the FAR?
[ ] a.
[ ] b.
[ ] c.
[ ] d.
[ ] e.
Very often
Often
Occasionally
Seldom
Never

48. Would you utilize a key word computerized search capability to locate subjects in the FAR?
a. [ ] Yes.
b. [ ] No.
c. [ ] Not sure.

49. If you were able to electronically access the text of the recent FAR changes, would you find this useful?
a. [ ] Yes.
b. [ ] No.
c. [ ] Not sure.

50. If you responded yes to question 49, what means of accessing FAR changes would be most utilized?
a. [ ] An electronic bulletin board.
b. [ ] CD ROM.
c. [ ] Magnetic tape.
d. [ ] A floppy disk.
e. [ ] Do not know.
f. [ ] Other. _____

_____

User Data

51. I am employed by:
a. [ ] A civilian department of the Federal Government.
b. [ ] A military department.
c. [ ] Private industry.
d. [ ] Other (please specify) _____

52. My position is:
a. [ ] Purchasing or procurement agent.
b. [ ] Contract specialist.
c. [ ] Contracting officer.
d. [ ] Procurement analyst.
e. [ ] Contract negotiator.
f. [ ] Cost/price analyst.
g. [ ] Auditor.
h. [ ] Contract Administrator.
i. [ ] Attorney.

j. [ ] Other (please specify) _____.

53. Mark your highest education level attained.

a. [ ] Did not complete high school.
b. [ ] High school diploma.
c. [ ] Less than four years of college.
d. [ ] Bachelor's degree.
e. [ ] Law degree.
f. [ ] Master's degree.
g. [ ] Doctorate degree.

54. My experience in Federal contracting is:

a. [ ] Less than 1 year.
b. [ ] 1 to 3 years.
c. [ ] 4 to 6 years.
d. [ ] 7 to 10 years.
e. [ ] More than 10 years.

55. To what extent have you received, within the past 5 years, formal training in:

		Little or no extent	Some extent	Great extent	Very great extent	Not applicable to job
		a.	b.	c.	d.	e.
55.1	Use of the FAR	[ ]	[ ]	[ ]	[ ]	[ ]
55.2	Contract pricing/negotiation skills	[ ]	[ ]	[ ]	[ ]	[ ]
55.3	Understanding contract administration responsibilities	[ ]	[ ]	[ ]	[ ]	[ ]
55.4	Sealed bid acquisitions	[ ]	[ ]	[ ]	[ ]	[ ]
55.5	Negotiated acquisitions	[ ]	[ ]	[ ]	[ ]	[ ]
55.6	Small purchase	[ ]	[ ]	[ ]	[ ]	[ ]
55.7	Contract terminations	[ ]	[ ]	[ ]	[ ]	[ ]
55.8	Contract law	[ ]	[ ]	[ ]	[ ]	[ ]

56. The dollar limit of my contracting authority is:

a. [ ] No contracting authority.
b. [ ] $2,000.
c. [ ] $25,000.
d. [ ] $100,000.
e. [ ] $1,000,000.
f. [ ] $10,000,000.
g. [ ] $50,000,000.
h. [ ] More than $50,000,000.

Follow-up:

57. If you wish, provide your name and telephone number so that we may contact you for more information and recommendations.

Name

Telephone number including area code

Comments/Suggestions

58.

Thank you for taking the time to respond to this survey. Just staple the booklet and drop it in any mailbox.

[FR DOC. 90-23550 Filed 10-5-90; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee (MHRAC): Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

Federal Register Citation of Previous Announcement: September 20, 55 FR 38752.

Previously Announced Time and Date: 12:30 p.m.—5 p.m., October 10, 1990, 9 a.m.—12:30 p.m., October 11, 1990.

Change in the Meeting: This meeting has been cancelled.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Melvin L. Myers, Executive Secretary, MHRAC, NIOSH, CDC, 1600 Clifton Road, NE., D37, Atlanta, Georgia 30333, telephone 404/639-2376 or FTS 236-2376.

Dated: October 3, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-23886 Filed 10-5-90; 8:45 am]

BILLING CODE 4160-10-M

Health Care Financing Administration

[BPD-645-PN]

RIN: 0938-AF18

Medicare Program; Withdrawal of Coverage of Thermography

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the Medicare program's proposal to withdraw Medicare coverage of thermography for all indications. Evidence suggests that thermography is not a useful diagnostic modality. Therefore, it does not meet HCFA's criteria for effectiveness.

DATES: To assure consideration, comments must be received at the appropriate address, as provided below, no later than 5 p.m. on December 10, 1990.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-645-PN, Baltimore, Maryland 21207.

If you prefer, you many deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-645-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Sam Della Vecchia, (301) 966-5316.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Administration of the Medicare program is governed by the Medicare statute, title XVIII of the Social Security Act (the Act). The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, skilled nursing facility (SNF) care, home health care, and physicians' services. It places general and categorical limitations on the coverage of the services furnished by certain health care practitioners, such as dentists, chiropractors and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, routine physical checkups, and procedures that are not reasonable and necessary for diagnosis or treatment of an illness or injury. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety and quality standards to be met by institutions furnishing services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of durable medical equipment in section 1861(n) of the Act, some of the medical and other health services listed in section 1861(s) of the Act, and exclusions from coverage listed in section 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic or therapeutic services that should be covered or excluded from coverage.

The intention of Congress, at the time the Medicare Act was enacted in 1965, was that Medicare would provide health insurance to protect the elderly or disabled from the substantial costs of health care services. The program was designed generally to cover services ordinarily furnished by hospitals, SNFs, and physicians licensed to practice medicine. Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision of coverage by those administering the program. Thus, it vested in the Secretary the authority to make those decisions. Among the provisions relevant to the determination of coverage is section 1862(a)(1)(A) of the Act, which prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

We have interpreted this statutory provision to exclude from Medicare coverage those medical and other health care services that are not demonstrated to be safe and effective by acceptable clinical evidence. Effectiveness in this context is considered to be the probability of benefit to individuals from a medical item, service, or procedure for a given medical problem under average conditions of use; that is, day-to-day medical practice. In day-to-day medical practice, physicians diagnose and treat clinical conditions following inquiry into an individual's medical history, performance of a physical examination, and interpretations of a variety of diagnostic tests and procedures. To be of value to the physician, the information obtained from any diagnostic test or procedure must be sufficiently accurate to establish or rule out the presence of a given disease. Payment may not be made under Medicare for any diagnostic test or procedure that does not produce accurate results when properly performed, since that test cannot be considered "reasonable and necessary for the diagnosis or treatment of illness or injury."

B. Medicare Coverage of Thermography

Thermography is the measurement of self-emanating infrared radiation that reveals temperature variation at the surface of the body. The thermographic device senses body temperature and demonstrates areas of differing heat emission by producing brightly colored patterns. Each color represents a specific temperature level. Proponents of the device believe that interpretations of the color patterns according to designated anatomic distributions are a useful aid in diagnosing a vast array of diseases.

Currently, thermography may be covered under Medicare for the following indications when disease or injury is suspected:

1. Peripheral vascular disease (for example, thrombophlebitis, arterial insufficiency).

2. Musculoskeletal injury (for example, low back injury involving musculoligamentous soft tissue or herniated disc).

3. Cervical thermography for diagnosis of extra-cranial vessel disease causing carotid insufficiency (CNS) symptoms, and for diagnosis of inflammatory, neoplastic, and hyperplastic lesions. The following are some examples, by category, of the use of cervical thermography in diagnosing lesions:

a. Inflammatory lesions:

i. Soft tissue injury (for example, whiplash).

ii. Presence of a foreign body (for example, loa loa, a filarial roundworm infection).

b. Neoplastic lesions:

i. Parathyroid adenoma.

ii. Isotopically cold thyroid nodule.

iii. Tumor of the larynx with metastases to neck lymph nodes.

c. Hyperplastic lesions:

i. Parathyroid adenoma.

ii. Isotopically hot thyroid nodule.

C. Recommendaitons To Withdraw Coverage of Thermography

Early in 1982, contractors who process Medicare claims recommended that HCFA limit coverage of thermography. Their recommendation was based on the belief that more precise techniques have been developed, since the advent of thermography, for diagnosing disease. Moreover, the contractors believed that thermography was ineffective as a diagnostic technique. As a result of the contractors' recommendation, a compilation of the latest medical and scientific evidence was presented to the HCFA Physicians Panel. The HCFA Physicians Panel, which meets aprpoximately once every six to eight weeks, is composed of physicians and other health professionals in HCFA's Central Office and their counterparts from the Public Health Service (PHS). The Panel recommended that PHS's Office of Health Technology Assessment (OHTA) conduct an assessment of the safety and effectiveness of thermography as a diagnostic technique in accordance with HCFA's longstanding policy, discussed in the proposed rule published on January 30, 1989 in the **Federal Register** (54 FR 4302)—"Medicare Program Criteria and Procedures for Making Medical Services Coverage Decisions that Relate to Health Care Technology." That proposed rule would establish in regulations the criteria for and procedures used in making coverage decisions and in re-evaluating established coverage decisions. HCFA and OHTA agreed that two separate assessments be conducted, the first assessment on thermography for use in detecting breast disease, and the other on thermography for indications other than breast disease. HCFA forwarded this request for assessment to the PHS on May 27, 1982.

We received the OHTA assessment on thermography for use in detecting breast disease early in 1984 (assessment report dated December 21, 1983). The assessment was entitled "Public Health Service Medical and Scientific Evaluation—Thermography for Breast Cancer Detection (1983)" and included a bibliography of studies evaluating thermography's effectiveness in breast cancer detection. Based on the recommendation of OHTA, we revised our policy to exclude coverage of this particular use of thermography, effective July 20, 1984. However, coverage of thermography continues for the diagnoses of conditions in anatomic areas other than the breast. (Thermography, when used for diagnosing conditions in anatomic areas other than the breast, is listed as a covered technology in the Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, "Thermography," and in the notice "National Coverage Decisions," published in the Federal Register on August 21, 1989 (54 FR 34555).)

On March 21, 1985, OHTA issued an assessment on thermography for indications other than breast disease. On August 5, 1985, OHTA withdrew this assessment in order to review additional, recently submitted information. After reviewing the latest scientific data, OHTA issued its assessment on January 26, 1989 on Thermography for diagnosing indications other than breast disease. The assessment was entitled "Public Health Service Assessment—Thermography for Indications Other than Breast Lesions (1989)" and included a bibliography of studies evaluating thermography's effectiveness for non-breast indications. (Copies of this assessment may be obtained from the Publications and Information Branch, Agency for Health Care Policy and Research, 5600 Fishers Lane, Parklawn Building, Room 18–12, Rockville, Maryland 20857. Note: The reference on page 74 of the assessment to the "1987 assessment" is a typographical error. The correct date is 1989.) OHTA recommended that we discontinue coverage of thermography for the diagnosis of conditions in anatomic areas other than the breast. During its assessment, OHTA solicited information and advice from other PHS components including the Food and Drug Administration (FDA) and the National Institutes of Health (NIH). It also evaluated the information from medical specialty groups and respondents to a **Federal Register** notice published on March 16, 1984 (49 FR 9961). In that notice, OHTA announced that it was conducting an assessment of diagnostic thermography for all indications other than breast lesions. Finally, OHTA researched and analyzed published medical and scientific literature and relevant studies and reports.

According to the OHTA appraisal, the weight of available evidence does not indicate that thermography is a clinically effective diagnostic procedure for non-breast indications. The issues related to the clinical use of thermography are its sensitivity, specificity, and predictive value as a means of arriving at specific diagnoses. The evidence points out that thermography does not assist in accurately diagnosing an illness. Moreover, there is no evidence to indicate that thermography provides a useful guide in monitoring the effect of treatment of any disease entity. In seeking advice from NIH, OHTA was advised that while thermography might confirm the presence of temperature differences, temperature differences in themselves add very little to a physician's assessment based on the patient's history, physical examination, and other studies, thereby necessitating the use of other procedures to reach a specific diagnosis.

To date, there have been no controlled clinical trails that provide conclusive evidence establishing the usefulness of thermography as a primary diagnostic guide. In other words, this procedure only confirms the presence of temperature differences, which, in themselves, do not indicate a specific diagnosis. NIH concluded that the diagnostic efficacy of thermography cannot be resolved in the absence of additional experimental research and that there is a need for well-designed studies to validate its usefulness. Futhermore, FDA in its advice to OHTA supports the conclusion that thermography is an adjunct to other clinical diagnostic procedures and that it neither detects any conditions nor provides diagnoses of those conditions. FDA currently requires that labeling for thermography instrumentation specify only adjunctive use, since, in the agency's view, the clinical implications of anomalous temperature patterns can be ascertained only by other diagnostic means.

II. Provisions of the Proposed Notice

Based on OHTA's conclusion that the available scientific evidence does not substantiate the effectiveness of thermography, we proposed to exclude thermography for all indications. Issuance of this notice is consistent with the January 30, 1989 **Federal Register** proposed rule that describes the process for making coverage decisions that states that the process for withdrawal of coverage of services would include the publication of a proposed notice of that withdrawal in the **Federal Register.**

The provisions of this notice would not affect any existing Medicare regulations. However, they would affect the following manual instruction:

Medicare Coverage Issues Manual (HCFA Pub. 6)—Section 50–5, Thermography

III. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule:" that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians and facilities that are providing this diagnostic technique to be small entities.

In 1987, the total Medicare charges for thermography were significantly less than $500,000. Thus, this proposed notice does not meet the $100 million criterion; nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this proposed notice is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required. Further, we have determined and the Secretary certifies that this proposed notice would not have a substantial impact on a substantial number of small entities, and we have, therefore, not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must

conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Social Security Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area and with fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on proposed notices, we are not able to acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments that we receive by the date and time specified in the "DATE" section of this preamble, and if we proceed with a final notice, we will respond to the major issues in the preamble of that notice.

V. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

(Sections 1861 and 1862 of the Social Security Act (42 U.S.C 1395x and 1395y.)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance.)

Dated: June 7, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-23690 Filed 10-5-90; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Notice of Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee, NIH

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome (AIDS) Program Advisory Committee, NIH on November 19-20, 1990 at the National Institutes of Health, Bethesda, MD. The meeting will take place on November 19 from 9 a.m. to 5 p.m., and on November 20 from 9 a.m. to 12 p.m., in Building 31, C Wing, Conference room 10. The meeting will be open to the public.

The purpose of the meeting will be to examine priorities in the NIH AIDS research program in light of recent budgetary constraints. In addition, we will address the Report of the National Commission on AIDS as it relates to the NIH. Anthony S. Fauci, Associate Director for AIDS Research, National Institutes of Health, Shannon Building, room 201, Bethesda, MD 20892, (301) 496-0357, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: October 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23710 Filed 10-5-90; 8:45 am]

BILLING CODE 4140-01-M

National Biotechnology Policy Board; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Biotechnology Policy Board on October 29, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m. The meeting will be open to the public, the Board will discuss the various programs of the Federal government relating to biotechnology including the type of biotechnology-related research, research training, and career development activities. The Board may consider nonconfidential, privately-funded biotechnology activities including both basic and applied research and the development of commercial biotechnology-related industries and products.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which biotechnology could be included, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: October 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23711 Filed 10-5-90; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Asthma Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Friday, November 2, 1990, from 8:30 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland, 20814, (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Asthma Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Dated: October 2, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90-23712 Filed 10-5-90; 8:45 am]

BILLING CODE 4140-01-M

Notice of Meeting of the Division of Research Grants Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the

Division of Research Grants Advisory Committee, November 19, 1990, Conference room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 4:30 p.m. The one-day meeting will include a discussion of the procedures and quality of peer review. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-7534, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7441, will provide substantive program information upon request.

Dated: October 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-23713 Filed 10-5-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 29, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by October 24, 1990.

Carol D. Shull,

Chief of Registration, National Register.

KANSAS

Butler County

Augusta Theater, 525 State St., Augusta, 90001577

Franklin County

Tauy Creek Bridge (Metal Truss Bridges in Kansas MPS), Over Tauy Cr. N of I-35, Ottawa vicinity, 90001567

Leavenworth County

Hollywood Theater, 401 Delaware St., Leavenworth, 90001575

Morris County

Big John Farm Limestone Bank Barn, N of US 56, E of Big John Cr., Council Grove vicinity, 90001576

MARYLAND

Harford County

Heighe House, Jct. of Southhampton and Moores Mill Rds., Bel Air vicinity, 90001568

Woodview, 1236 Somerville Rd., Bel Air vicinity, 90001574

Somerset County

St. Mark's Episcopal Church, Jct. of Westover—Marion and Charles Barnes Rds., Kingston vicinity, 90001569

MICHIGAN

Ingham County

Penfil Apartments, 198-110 S. Hosmer St., Lansing, 90001654

NEW MEXICO

Los Alamos County

Chupaderos Canyon Small Structural Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Espanola vicinity, 90001585

Chupaderos Mesa Village (Cultural Developments on the Parjarito Plateau MPS), Address Restricted, Espanola vicinity, 90001583

Guaja Water/Soil Control Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Espanola vicinity, 90001582

Rio Arriba County

Corral Canyon Pueblo Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Espanola vicinity, 90001581

Corral Mesa Cavate Pueblo Site (Cultural Developments on the Pajarito Plateau MPS), Address Restricted, Expanola vicinity, 90001584

NORTH CAROLINA

Wake County

Dix Hill, Roughly bounded by Dorothea Dr., Lake Wheeler Rd. and the Norfolk Southern RR tracks, Raleigh, 90001638

OHIO

Cuyahoga County

Magnolia—Wade Park Historic District, Roughly bounded by Asbury Ave., E. 118th St., Wade Park Ave., Mistletoe Dr., Magnolia Dr., and E. 105th St., Cleveland, 90001566

OREGON

Clackamas County

Clark, Elizabeth, House, 812 John Adams St., Oregon City, 90001590

Coos County

Black, A.H. and Company, Building, 531 Spruce St., Myrtle Point, 90001586

Hood River County

IOOF—Paris Fair Building, 315 Oak St., Hood River, 90001598

Loomis, Robert and Mabel, House, 1100 State St., Hood River, 90001599

Murphy, Lester and Hazel, House, 1006 Sherman St., Hood River, 90001600

Shaw—Dumble House, 318 Ninth St., Hood River, 90001601

Jackson County

Colver, Samuel, House, 150 Main St., Phoenix, 90001596

Josephine County

Fetzner, Joseph, House, 314 NE. Fetzner St., Grants Pass, 90001595

Hugo Community Baptist Church, 6501 Hugo Rd., Grants Pass vicinity, 90001587

Lane County

Peters, A. V., House, 1611 Lincoln St., Eugene, 90001597

Wilson, Woodrow, Junior High School, 650 W. Twelfth Ave., Eugene, 90001602

Linn County

Cascadia Cave, Address Restricted, Cascadia vicinity, 90001589

Crandall, Louis A., House, 959 Main St., Lebanon, 90001586

Multnomah County

Buck Apartment Building, 415 NW. Twenty-first Ave., Portland, 9001594

Burrell, Walter F., House, 2610 SE. Hawthorne, Portland, 90001593

Morgan, Melinda E., House, 3115 NW. Thurman St., Portland, 90001592

Wheeldon Apartment Building, 910 SW. Park Ave., Portland, 90001591

PENNSYLVANIA

Berks County

Bohr Mill Complex (Gristmills in Berks County MPS), Ironstone Dr., Colebrookdale Township, Gabelsville, 90001611

Borneman Mill (Gristmills in Berks County MPS), Off PA 100 SW of Clayton, Washington Township, Bally vicinity, 90001612

Brobst Mill (Gristmills in Berks County MPS), Off T 814 on Pine Cr., Albany Township, Lenhartsville vicinity, 90001613

Dreibelbis Mill (Gristmills in Berks County MPS), Jct. of Dreibelbis Mill and Bellevue Rds., Perry Township, Shoemakersville vicinity, 90001614

Geiger Mill (Gristmills in Berks County MPS), Jct. of Mill Rd. and PA 82, Robeson Township, Geigertown, 90001615

Griesemer—Brown Mill Complex (Gristmills in Berks County MPS), Brown's Mill Rd. at Monocacy Cr., Amity Township, Birdsboro vicinity, 90001616

Guldin Mill (Gristmills in Berks County MPS), Off PA 73 SE of jct. with US 222, Maiden Creek Township, Blandon, 90001617

Main Mill (Gristmills in Berks County MPS), Jct. of Hain Mill Rd. and T 495, Lower Heidelberg Township, Wernersville vicinity, 90001618

Johnson, Nicholas, Mill (Gristmills in Berks County MPS), Mill Crest Rd., Colebrookdale Township, New Berlinville, 90001619

Kauffman Mill (Gristmills in Berks County MPS), Jct. of Mill and Mill Hill Rds., Upper Bern Township, Shartlesville, 90001620
Knabb—Bieber Mill (Gristmills in Berks County MPS), Bieber Mill Rd. at Monocacy Ct., Oley Township, Stony Creek Mills vicinity, 90001621
Kutz Mill (Gristmills in Berks County MPS), Kutz Mill Rd. at Sacony Cr., Greenwich Township, Kutztown vicinity, 90001622
Long—Hawerter Mill (Gristmills in Berks County MPS), Longsdale Rd. at Little Lehigh Cr., Longswamp Township, Topton vicinity, 90001623
Merkel Mill (Gristmills in Berks County MPS), Dreibelbis Station Rd. at Maiden Cr., Greenwich Township, Lenhartsville vicinity, 90001625
Merkel Mill Complex (Gristmills in Berks County MPS), Jct. of PA 662 and PA 143, Richmond Township, Virginville vicinity, 90001626
Mill at Lobachsville (Gristmills in Berks County MPS), Mill Rd. at Pine Cr., Pike Township, Lobachsville, 90001624
Moselem Farms Mill (Gristmills in Berks County MPS), Jct. of PA 662 and Forge Rd., Richmond Township, Moselem, 90001627
Rieser Mill (Gristmills in Berks County MPS), Jct. of Grange and Cross Keys Rds., Bern Township, Leesport vicinity, 90001628
Seyfert Mill (Gristmills in Berks County MPS), Jct. of Old US 22 and Campsite Rd., Upper Tulpehocken Township, Strausstown vicinity, 90001629
Snyder Mill (Gristmills in Berks County MPS), Oley Line Rd. at Monocacy Cr., Exeter Township, Limekiln vicinity, 90001630
Spannuth Mill (Gristmills in Berks County MPS), Jct. of Frystown and Crosskill Creek Rds., Bethel Township, Frystown vicinity, 90001631
Stein Mill (Gristmills in Berks County MPS), PA 737 at Mill Cr., Greenwich Township, Kutztown vicinity, 90001632
Thompson Mill (Gristmills in Berks County MPS), Golf Course Rd. at Seidel Cr., Robeson Township, Gibraltar vicinity, 90001633
Weidner Mill (Gristmills in Berks County MPS), Blacksmith Rd. at Manatawny Cr., Amity Township, Earlville vicinity, 90001634
Hertz Mill (Gristmills in Berks County MPS), 60 Erner St., Wernersville, 90001635
Yoder Mill (Gristmills in Berks County MPS), Yoder Rd. at Oysterville Cr., Pike Township, Pikeville, 90001636

Chester County

Brinton, George, House, PA 100, 1 mi. N of jct. with US 1, Birmingham Township, Chadds Ford, 90001608

Fayette County

Nutt, Adam Clarke, Mansion, 26 Nutt Ave., Uniontown, 90001607

Montomery County

Elkins Railroad Station, Philadephia and Reading Railroad, Jct. of Spring and Park Aves., Cheltenhan Township, Elkins Park, 90001609

Northampton County

Easton Cemetery, 401 N. Seventh St., Easton, 90001610

SOUTH DAKOTA

Beadle County

Dairy Building, Off Third St. near the South Dakota State Fair Grounds, Huron, 90001642

Day County

Zoar Norwegian Lutheran Church, 7 mi. E, 5 mi. N of Grenville, Grenville vicinity, 90001644

Jackson County

Jones, Tom, Ranch, 5½ mi. S of Midland, Midland vicinity, 90001653

Lawrence County

Ainsworth, Oliver N., House, 340 Kansas, Spearfish, 90001646
Corbin, James A., House, 345 Main St., Spearfish, 90001651
Court, Henry, House, 329 Main St., Spearfish, 90001652
Hewes, Arthur, House, 811 St. Joe, Spearfish, 90001650
Spearfish City Hall, 722 Main St., Spearfish, 90001649
Sunderland, James, House, 711 Canyon, Spearfish, 90001648
Whitney, Mary, House, 704 Eighth St., Spearfish, 90001647

McPherson County

Eureka Lutheran College, 301 Fourth St., Eureka, 90001642

Yankton County

Doyle, Harold R. (H. A.), House, 712 W. Third St., Yankton, 90001645

TENNESSEE

Bedford County

Farrar Homeplace, 170 Ike Farrar Rd., Shelbyville vicinity, 90001657

Davidson County

Dozier Farm, 8451 River Rd. Pike, Nashville vicinity, 9001580

Dyer County

King, Edward Moody, House, 512 Finley St., Dyersburg, 90001658

Hamilton County

Cravens-Coleman House, 1 Cravens Ter., Chattanooga, 90001655

Jackson County

Gainesboro Historic District, Roughly bounded by Cox, Minor, Montpelier and Mark Twain Sts., Gainesboro, 90001570

Knox County

Park City Historic District, Roughly bounded by Washington Ave., Cherry St., Woodbine Ave., Beaman St., Magnolia Ave. and Winona St., Knoxville, 90001578

Madison County

Northwood Avenue Historic District, 1–38 Northwood Ave., Jackson, 90001659

Marion County

South Pittsburg Historic District, Roughly bounded by Elm & Walnut Aves. and 2nd & 7th Sts., South Pittsburg, 90001573

Maury County

Derryberry House, New Lasea Rd. E of jct. with I–65, Spring Hill vicinity, 90001656

Rutherford County

Hill, Walter, Hydroelectric Station (Pre-TVA Hydroelectric Development in Tennessee MPS), US 231 at Stones R., Murfreesboro, 90001660

Shelby County

Fairview Junior High School, 750 E. Parkway S., Memphis, 90001571
Pinch-North Main Commerical District (Boundary Increase), 122 Jackson Ave., Memphis 90001637

Sumner County

Greenfield, 683 Rock Springs Rd., Castalian Springs vicinity, 90001579

VIRGINIA

Petersburg Independent City

Petersburg Courthouse Historic District, Roughly bounded by W. Bank, N. Adams, W. Washington and N. Market Sts., Petersburg, 90001572

WASHINGTON

Grant County

Stratford School (Rural Public Schools of Washington State MPS), Just off WA 7, Stratford, 90001606

Spokane County

Cheney Odd Fellows Hall, 321 First St., Cheney, 90001639

Walla Walla County

Green Park School, 1105 Isaacs Ave., Walla Walla, 90001604

Yakima County

Brackett, E. William, House, 2606 Tieton Dr., Yakima, 90001605
McAllister, Alexander, House, 402 W. White St., Union Gap, 90001603

WEST VIRGINIA

Fayette County

Kay Moor, Along the New R. S of US 19, Fayetteville vicinity, 90001641

Raleigh County

Trump—Lilly Farmstead, WV 26/3m 2.5 mi. from WV 26, Hinton vicinity, 90001640

[FR Doc. 90-23769 Filed 10-5-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 22, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments

concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by October 24, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Fire Station No. 10 (Historic Fire Stations of Birmingham MPS), 4120 2nd Ave. S., Birmingham, 90001556

Fire Station No. 11 (Historic Fire Stations of Birmingham MPS), 1250 13th St. N., Birmingham, 90001557

Fire Station No. 12 (Historic Fire Stations of Birmingham MPS), 15 57th St. S., Birmingham, 90001558

Fire Station No. 15 (Historic Fire Stations of Birmingham MPS), 1345 Steiner Ave., SW., Birmingham, 90001559

Fire Station No. 16 (Historic Fire Stations of Birmingham MPS), 1621 Ave. C, Birmingham, 90001560

Fire Station No. 19 (Historic Fire Stations of Birmingham MPS), 7713 Division Ave., Birmingham, 90001561

Fire Station No. 22 (Historic Fire Stations of Birmingham MPS), 3114 Clairmont Ave., Birmingham, 90001562

Fire Station No. 3 (Historic Fire Stations of Birmingham MPS), 2210 Highland Ave., Birmingham, 90001554

Fire Station No. 6 (Historic Fire Stations of Birmingham MPS), 317 15th N., Birmingham, 90001555

Fire Station (Historic Fire Stations of Birmingham MPS), NE Corner 8th Ave. and Huron St., Birmingham, 90001563

ALASKA

Bethel Borough-Census Area

First Mission House, 291 Third Ave., Bethel, 90001551

MARYLAND

Somerset County

Grace Episcopal Church, Mt. Vernon Rd. N of jct. with Ridge Rd., Mt.Vernon vicinity, 90001565

St. John's Methodist Episcopal Church and Joshua Thomas Chapel, Deal Island Rd. N of jct. with Tangier Rd., Deal Island, 90001550

MASSACHUSETTS

Middlesex County

Framingham Centre Common Historic District, Roughly centered on Framingham Centre Common, between MA 9 and I-90, Framingham, 90001564

MINNESOTA

Hennepin County

Swinford Townhouses and Apartments, 1213-1221, 1225 Hawthorne Ave., Minneaplis, 90001552

NEW JERSEY

Bergen County

Ackerman-Dennett House (Saddle River MRA), 81 W. Saddle River Rd., Saddle River, 90001553

Burlington County

Fenwick Manor, 15 Springfield Rd. (Pemberton township), New Lisbon, 90001549

VIRGINIA

Colonial Heights Independent City

Conjurer's Field Archeological Site (44CF20), Address Restricted, Colonial Heights (Independent City), 90001139

A proposed move is being considered for the following property:

INDIANA

Huntington County

Chief Richardville House W of Huntington on US 24 & IN 9/37 Huntington 85002446

[FR Doc. 90-23770 Filed 10-5-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated August 20, 1990, and published in the **Federal Register** on August 29, 1990 (55 FR 35376), Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23687 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated August 6, 1990, and published in the **Federal Register** on August 17, 1990, (55FR33783), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-ethylamphletamine (1475)	I
cis-4-Methylaminorex (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7881)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
N-hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-methylenedioxy-N-ethylemphetamine (7404).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Ethlyamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
Thiophene analog of phencyclidine (7470).	I
Dihydromorphine (9145)	I
Thebacon (9315)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603).	II
Cocaine (9041)	II
Codeine (1950)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer

of the basic classes of controlled substances listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23686 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice on July 11, 1990, Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Pentobarbital (2270).

The firm plans to manufacture small quantities of a deuterated form of this material that will be made into exempt deuterated drug reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 8, 1990.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Aministrator.

[FR Doc. 90-23688 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated March 20, 1990, and published in the **Federal Register** on April 2, 1990, (55FR12299), Smithkline Chemicals, Division Smithkline Beckman Company, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers and salts of its optical isomers (1100).	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 3030 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substance listed above is granted.

Dated: October 1, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-23689 Filed 10-5-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a public meeting of the Work Group on Pension Fund Investment Behavior of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m. Tuesday, October 23, 1990, in room C-2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington , DC 20210.

This nine member Working Group was formed by the Advisory Council to study issues relating to Pension Fund Investment Behavior for employee benefit plans covered by ERISA.

The purpose of the October 23, meeting is to review the work group's final report that provides background information on their preliminary findings and recommendations approved at the September 25, 1990 Advisory council meeting. In addition, the work group will discuss possible items for next year's agenda. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 19, 1990, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-23783 Filed 10-5-90; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Annuities of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1 p.m. Tuesday, October 23, 1990. In room C-2313, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine member Working Group was formed by the Advisory Council to study issues relating to Annuity Purchases for employee benefit plans covered by ERISA.

The purpose of the October 23 meeting is to follow up the meeting of August 21, and to receive further testimony and or submissions from interested individuals or groups as well as the general public regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before October 19, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington,

DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-23784 Filed 10-5-90; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, October 24, 1990, in room S-4215, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Sixty-Fifth meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to review and discuss a status report being prepared by each of the Council's work group i.e., Annuities; Pension Fund Investment Behavior; Enforcement, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before October 19, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523-8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 19, 1990.

Signed at Washington, DC, this 3rd day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90-23785 Filed 10-5-90; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Application for License to Export Utilization Facility

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice tht the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene must be served by the requestor or petitioner upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Executive Secretary, Department of State, Washington, DC 20520; and participants, if any.

In its review of the application for a license to export utilization facilities noticed herein, the Commission does not evaluate the health, safety or environmental effects within the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application number	Description and value	Country of destination
Combustion Eng., 08/31/90, 09/05/90, XR153.	Two civilian nuclear power plants—950 MWe each $300,000,000.	Republic of Korea.

Dated this 28 day of September 1990 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Acting Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 90-23768 Filed 10-5-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Rel. No. 28492/September 28, 1990]

Order Granting Accelerated Approval of a Application for Registration Until September 30, 1991

In the Matter of The Registration as a Clearing Agency of MBS Clearing Corp. File No. 600-19.

On February 2, 1987, the Securities and Exchange Commission granted the application of MBS Clearing Corporation ("MBSCC") for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and rule 17Ab2-1(c) thereunder, for a period of 18 months.[1] At that time, the Commission granted MBSCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[2]

On August 2, 1988, the Commission extended MBSCC's registration as a clearing agency and the exemption from compliance with section 17A(b)(3)(C) of the Act until August 2, 1989.[3] By letter, dated July 18, 1989, MBSCC withdrew its request for an exemption from compliance with section 17A(b)(3)(C).

On July 31, 1989, the Commission extended MBSCC's registration as a clearing agency until September 30, 1989.[4] On September 13, 1990, MBSCC filed an amendment to its application for registration as a clearing agency requesting an extension of registration for a period of 12 months and permanent registration as a clearing agency.[5]

[1] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[2] Section 17A(b)(3)(C) requires that MBSCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[3] Securities Exchange Act Release No. 25957 (August 2, 1988), 53 FR 29537.

[4] *See* Securities Exchange Act Release No. 27079 (July 31, 1989), 54 FR 32412.

[5] *See* letter from Jeff Lewis, Associate Counsel, MBSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, dated September 13, 1990.

Notice of MBSCC's amended application and request for extension of temporary registration appeared in the Federal Register on September 26, 1990.[6]

As discussed in detail in the order granting MBSCC's temporary registration, one of the primary reasons for MBSCC's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. MBSCC is currently revising its systems and procedures to enhance the safety and efficiency of its operations. For example, MBSCC has filed two rule proposals that would assure MBSCC and its participants that it has sufficient sources of liquidity to fund end-of-day settlement in the event of participant default.[7] In addition, MBSCC is in the process of establishing an off-site disaster recovery facility, and expects this facility to become operational in 1991.

MBSCC has functioned effectively as a registered clearing agency for over three years. Accordingly, in light of the past performance of MBSCC, as well as the need for MBSCC to provide continuity of service to its participants, the Commission believes that "good cause" exists, pursuant to Section 19, for extending MBSCC's registration for an additional 12 months before the expiration of the comment period on such extension.[8] Any comment received concerning MBSCC's amended application will be considered in conjunction with the Commission's consideration of whether to grant MBSCC permanent registration as a clearing agency under section 17A of the Act.

It is therefore ordered, that MBSCC's registration as a clearing agency be, and hereby is, approved until September 30, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-23700 Filed 10-5-90; 8:45 am]

BILLING CODE 8010-01-M

[6] *See* Securities Exchange Act Release No. 28451 (September 18, 1990), 55 FR 39339.

[7] *See* File Nos. SR-MBSCC-90-02 and SR-MBSCC-90-05.

[8] On or before the end of 12 months, the Commission expects to consider whether to grant MBSCC permanent registration as a clearing agency. In advance of taking any such action, the Commission will solicit comment and will consider any comments it may receive from interested persons.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA emergency Order No. 14, Notice No. 2]

Eureka Southern Railroad Co., Inc.; Passenger Service Allowed Between Milepost 142.5 and Milepost 145.5, and between Milepost 216.6 and Milepost 284.1

Based on Federal Railroad Administration (FRA) inspections of the Eureka Southern mainline, I have concluded that an emergency condition no longer exists on the segments between mileposts 142.5 and 145.5, and between mileposts 216.6 and 284.1. I am accordingly lifting FRA Emergency Order No. 14 (Order), which was issued June 7, 1990, as it applies to the trackage between mileposts 142.5 and 145.5, and between mileposts 216.6 and 284.1.

On August 16, 1990, the Eureka Southern notified FRA by telephone that its track was ready for inspection. FRA conducted in inspection in response to this oral request, rather than requiring written notification as specified in paragraph 2 of the Relief section of the Order. On August 24, at the conclusion of a four-day inspection, FRA advised the Eureka Southern that the railroad's track did not meet safety standards for Class I track specified at 49 CFR part 213.

After making further repairs, the Eureka Southern notified FRA by letter dated September 11, 1990, that it was ready for a second inspection of portions of its track. A second inspection was conducted by FRA beginning September 17, 1990.

This partial lifting of Emergency Order No. 14, based on this September inspection, is contingent on the Eureka Southern's continued maintenance of these segments in accordance with FRA's Class I standards. The issuance of this Notice should not be taken to preclude imposition of another emergency order should conditions between mileposts 142.5 and 145.5, and between mileposts 216.6 and 284.1 fall below Class I standards.

FRA has continued concerns for the condition of Tunnel 40, particularly with regard to the resumption of passenger service in the Spring of 1991. Further failure of the tunnel could result in FRA's issuing an additional emergency order if the Eureka Southern does not take adequate remedial measures to assure the safety of the tunnel.

Issued in Washington, DC, on October 1, 1990.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 90-23774 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-867]

American President Lines, Ltd.; Notice of Extension of Time for Comments

Notice is hereby given that the closing date for comments in the Docket S-867 application of American President Lines, Ltd. is extended to October 18, 1990. The Notice of Application of Docket S-867 was published in the Federal Register of July 13, 1990 (55 FR 28860).

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: October 3, 1990.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 90-23773 Filed 10-5-90; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. T84-01; Notice 24]

Passenger Motor Vehicle Theft Data for 1989; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice seeks public comment regarding data on passenger motor vehicle thefts that occurred in 1989. These data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI). These 1989 theft data indicate that vehicle thefts in 1989 decreased about 5 percent from the 1988 level. However, of the 164 lines sold in the United States during 1989, 107 of the lines (65 percent) had theft rates that exceeded the median theft rate for 1983/1984.

DATES: All comments on this notice must be received by NHTSA not later than November 23, 1990.

ADDRESSES: Comments should refer to Docket No. T84-01; Notice 24, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590 (202 366-4949).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202 366-4808).

SUPPLEMENTARY INFORMATION: Title VI of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act) 15 U.S.C. 2021 *et seq.*, directs NHTSA to promulgate a motor vehicle theft prevention standard applicable to high-theft car lines. Section 603(a)(1) of the Cost Savings Act (15 U.S.C. 2023(a)(1)) specifies that three types of car lines are high theft lines within the meaning of title VI:

(1) Existing lines that had a theft rate exceeding the median theft rate for the 1983-1984 period;

(2) New lines that are likely to have a theft rate exceeding the 1983-84 median theft rate; and

(3) Lines with theft rates below the 1983-84 median theft rate or (in the case of new lines) likely to be below the 1983-84 median theft rate, but which have a majority of major parts interchangeable with lines whose theft rates exceeded or are likely to exceed the median theft rate.

Section 603(b) of the Cost Savings Act explains how the agency is to determine whether existing lines had a theft rate that exceeded the 1983-84 median theft rate. Section 603(b)(3) directs NHTSA to

> obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, [NHTSA] shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comment, [NHTSA] shall utilize the theft data to determine the median theft rate under this subsection.

In accordance with this statutory directive, NHTSA published a final notice on November 12, 1985, setting forth the 1983-1984 theft data, 50 FR 46666. Based on those data, NHTSA calculated the median theft rate for purposes of title VI as 3.2712 thefts per 1000 vehicles produced.

Although the Cost Savings Act provides that the calculation of the median theft rate is a one-time event, section 603(b)(3) directs the agency to continue to collect and publish theft data on a periodic basis. The publication of national data should serve to inform the public, particularly law enforcement groups, automobile manufacturers, and Congress, of the extent of the vehicle theft problem and the impact, if any, on vehicle thefts as a result of the Federal motor vehicle theft prevention standard. To carry out this purpose, this notice sets forth the theft rates for the 164 lines of passenger motor vehicles sold in the United States for the 1989 model year, based on information provided by the NCIC.

These 1989 theft data show a decrease in vehicle thefts from the levels experienced in 1988, but are above the levels in 1983/1984. As earlier noted, for 1983/1984, the median theft rate was 3.2712 thefts per 1000 vehicles produced. For model years 1985 through 1988, the median increased to 3.4539, 3.6023, 4.1476, and 4.4158, respectively. The corresponding percentage of car lines per year that exceeded the 1983/1984 median theft rate also increased to 55 percent, 58.6 percent, 67.2 percent, and 70.2 percent, respectively. For 1989, however, this trend was reversed, and only 107 of the 164 lines, or 65.2 percent, exeeded 3.2712 thefts per 1000 vehicles produced. For model year 1989, the third effective year of the theft prevention standard, the 4.1959 median theft rate is a figure 28 percent higher than the median of model years 1983/1984, but a 5-percent decrease over model year 1988.

In calculating the 1989 theft data, the agency followed the same approach it used in calculating the 1983-1984 median theft rate, in that it has sought to eliminate multiple countings of the same theft by excluding all duplicate vehicle identification numbers (VINs) of stolen vehicles reported within seven calendar days of each other. This approach takes into account the possibility that a vehicle might actually be stolen more than once during a particular calendar year, but that it is highly unlikely to be stolen more than once in a week.

Interested persons are invited to submit comments on these data. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the data will be considered, and will be available for examination in the docket at the above address both before and after that data. To the extent possible, comments filed after the closing date will also be considered before publication of the final 1989 theft data. Comments on this notice will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelop with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2023; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on October 2, 1990.

Barry Felrice,

Associate Administrator for Rulemaking

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
1. Chrysler Corp	Chrysler Conquest	109	4,953	22.0069
2. Volkwagen	Cabriolet	147	10,531	13.9588
3. General Motors	Geo Prizm	36	2,820	12,7660
4. Toyota	Supra	211	17,899	11.7884
5. Ford Motor Co	Ford Mustang	2,149	189,500	11.3404
6. Chrysler Corp	Lebaron	990	90,380	10.9538

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
7. General Motors	Chevrolet Corvette	271	24,901	10.8831
8. Honda	Prelude	622	60,737	10.2409
9. Hyundai	Excel	1,845	181,911	10.1423
10. Mazda	323	838	83,306	10.0593
11. General Motors	Pontiac Grand AM	2,214	232,717	9.5137
12. Chrysler Corp	Chrysler New Yorker	827	91,476	9.0406
13. General Motors	Pontiac Firebird/Trans Am	526	58,462	8.9973
14. Chrysler Corp	Dodge Shadow	672	76,378	8.7983
15. General Motors	Chevrolet Camaro	924	106,338	8.6893
16. Chrysler Corp	Dodge Dynasty	997	115,292	8.6476
17. Hyundai	Sonata	299	34,756	8.6028
18. Mitsubishi	Mirage	203	23,759	8.5441
19. Nissan	Sentra	2,086	249,026	8.3766
20. General Motors	Cadillac Seville	185	22,267	8.3083
21. General Motors	Geo Spectrum	493	60,721	8.1191
22. Alfa Romeo	Milano	4	494	8.0972
23. Isuzu	Impulse	32	4,273	7.4889
24. Porsche	911	44	5,938	7.4099
25. Isuzu	I-Mark	220	30,000	7.3333
26. Chrysler Corp	Plymouth Sundance	610	84,489	7.2199
27. Toyota	MR2	43	6,145	6.9976
28. Chrysler Corp	Dodge Aries	371	53,294	6.9614
29. Chrysler Corp	Dodge Daytona	477	68,611	6.9522
30. General Motors	Chevrolet Cavalier	2,260	325,508	6.9430
31. Jaguar	XJ-S	30	4,551	6.5920
32. Mitsubishi	Sigma	14	2,131	6.5697
33. Subaru	Subaru	254	38,832	6.5410
34. General Motors	Pontiac Bonneville	624	95,883	6.5079
35. Chrysler Corp	Dodge Spirit	389	60,223	6.4593
36. Nissan	240SX	436	68,118	6.4007
37. Suzuki	Swift	62	9,795	6.3298
38. Volkswagen	Jetta	355	56,295	6.3061
39. Mazda	626/MX-6	546	86,899	6.2832
40. Nissan	Stanza	187	30,544	6.1223
41. Mazda	RX-7	53	8,706	6.0878
42. General Motors	Chevrolet Caprice	808	136,813	5.9059
43. General Motors	Pontiac Parisienne/Safari S/W	27	4,599	5.8708
44. Honda/Acura	Integra	281	47,907	5.8655
45. Ford Motor Co	Ford Thunderbird	623	108,288	5.7532
46. Ford Motor Co	Ford Probe	1,144	201,706	5.6716
47. MBW	3	206	36,526	5.6398
48. General Motors	Cadillac Fleetwood/Deville	952	170,903	5.5704
49. Ford Motor Co	Merkur XR4T1	16	2,878	5.5594
50. Mitsubishi	Galant	199	36,259	5.4883
51. Chrysler Corp	Eagle Medallion	53	9,717	5.4544
52. Chrysler Corp	Plymouth Acclaim	377	69,767	5.4037
53. Ford Motor Co	Lincoln Town Car	668	124,285	5.3747
54. General Motors	Pontiac 6000	427	79,749	5.3543
55. General Motors	Oldsmobile Custom Cruiser Wagen	45	8,451	5.3248
56. Nissan	Pulsar	145	27,447	5.2829
57. General Motors	Pontiac Lemans	327	62,858	5.2022
58. Chrysler Corp	Plymouth Reliant	272	52,448	5.1861
59. Nissan	Maxima	513	98,999	5.1819
60. Mercedes-Benz	300CE	12	2,317	5.1791
61. Nissan	300ZX	22	4,274	5.1474
62. Toyota	Cressida	144	28,069	5.1302
63. General Motors	Pontiac Grand Prix	650	128,102	5.0741
64. General Motors	Geo Metro	227	45,000	5.0444
65. Ford Motor Co	Ford Escort/Exp	1,730	343,543	5.0358
66. Chrysler Corp	Dodge Lancer	14	2,781	5.0342
67. General Motors	Oldsmobile Cutlass Supreme	469	94,521	4.9619
68. Ford Motor Co	Lincoln Mark VII	139	28,622	4.8564
69. General Motors	Oldsmobile 98/Touring	327	68,148	4.7984
70. General Motors	Chevrolet Beretta/Corsica	1,776	375,030	4.7356
71. Ford Motor Co	Mercury Cougar	439	92,817	4.7297
72. General Motors	Buick Skylark	281	59,590	4.7156
73. Chrysler Corp	Eagle Premier	194	41,269	4.7009
74. Porsche	928	5	1,087	4.5998
75. Subaru	XT/XT6	48	10,494	4.5740
76. General Motors	Oldsmobile Delta 88 Royale	630	138,915	4.5351
77. General Motors	Buick Lesabre	619	138,033	4.4844
78. Ford Motor Co	Ford Tempo	1,069	242,074	4.4160
79. General Motors	Buick Electra/Lesabre Estate Wagon	31	7,298	4.2477
80. Toyota	Corolla/Corolla Sport	940	221,578	4.2423
81. Honda	Civic	689	164,143	4.1976
82. General Motors	Buick Skyhawk	98	23,365	4.1943
83. Mercedes-Benz	560SEL	25	5,967	4.1897
84. Honda/Acura	Legend	194	46,485	4.1734

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
85. General Motors	Chevrolet Celebrity	792	190,649	4.1542
86. Ford Motor Co	Mercury Tracer	266	64,578	4.1190
87. General Motors	Oldsmobile Cutlass Ciera	901	219,829	4.0986
88. BMW	6	6	1,466	4.0928
89. Mercedes-Benz	560SL	35	8,557	4.0902
90. Peugeot	405	22	5,433	4.0493
91. BMW	7	43	10,885	3.9504
92. General Motors	Buick Electra	306	79,069	3.8700
93. Toyota	Camry	1,053	272,308	3.8669
94. Toyota	Tercel	486	127,087	3.8242
94. General Motors	Buick Century	557	146,886	3.7921
96. Toyota	Celica	229	61,969	3.6954
97. Ford Motor Co	Ford Festiva	275	74,994	3.6670
98. Chrysler Corp	Eagle Summit	99	27,151	3.6463
99. Ford Motor Co	Mercury Topaz	338	93,828	3.6023
100. General Motors	Buick Regal	298	83,915	3.5512
101. Mercedes-Benz	190D/E	51	14,899	3.4230
102. Ford Motor Co	Mercury Sable	408	119,218	3.4223
103. Mazda	929	72	21,422	3.3610
104. Volvo	780	6	1,795	3.3426
105. General Motors	Oldsmobile Toronado Brougham	32	9,598	3.3340
106. Chrysler Corp	Chrysler Fifth Avenue	48	14,523	3.3051
107. Alfa Romeo	Spider Veloce 2000	5	1,527	3.2744
108. Chrysler Corp	Dodge Omni	133	41,371	3.2148
109. Volvo	740/760	154	48,763	3.1581
110. Ford Motor Co	Lincoln Continental	173	55,153	3.1367
111. BMW	5	48	15,712	3.0550
112. Jaguar	XJ6	32	10,508	3.0453
113. Chrysler Corp	Plymouth Horizon	124	41,164	3.0123
114. Honda	Accord	1,027	346,647	2.9627
115. Mercedes-Benz	300SE	22	7,530	2.9216
116. Mercedes-Benz	300E	52	18,264	2.8471
117. Peugeot	505	7	2,471	2.8329
118. Volkswagen	Fox	109	38,511	2.8304
119. Mercedes-Benz	300SEL	12	4,268	2.8116
120. Ford Motor Co	Mercury Grand Marquis	348	127,365	2.7323
121. Ford Motor Co	Ford Taurus	1,013	371,115	2.7296
122. Mercedes-Benz	420SEL	22	8,191	2.6859
123. Mercedes-Benz	260E	15	5,646	2.6567
124. General Motors	Buick Reatta	18	6,895	2.6106
125. Mercedes-Benz	560SEC	5	1,936	2.5826
126. Yugo	GV/GVX/GVL/GVS	2	800	2.5000
127. Chrysler Corp	Plymouth Colt/Colt Vista	106	42,426	2.4985
128. Chrysler Corp	Dodge Colt/Colt Vista	111	45,715	2.4281
129. Saab	9000	21	8,864	2.3691
130. General Motors	Cadillac Eldorado	71	30,273	2.3453
131. Volvo	240 DL/GL	99	43,237	2.2897
132. Saab	900	51	22,567	2.2599
133. Ferrari	328	1	449	2.2272
134. Daihatsu	Charade	35	15,812	2.2135
135. General Motors	Cadillac Brougham	83	38,353	2.1641
136. General Motors	Buick Riviera	44	20,341	2.1631
137. Ford Motor Co	Ford LTD/Crown Victoria	224	106,785	2.0977
138. Audi	80/90	9	5,036	1.7871
139. Porsche	944	6	3,684	1.6287
140. Subaru	Justy	40	24,841	1.6102
141. Chrysler Corp	Plymouth Gran Fury	7	4,487	1.5601
142. Chrysler Corp	Chrysler TC	5	3,764	1.3284
143. Audi	100/200	15	12,191	1.2304
144. Ford Motor Co	Merkur Scorpio	7	5,915	1.1834
145. Sterling	Sterling 825/827	4	3,532	1.1325
146. General Motors	Oldsmobile Cutlass Calais	111	105,291	1.0542
147. Volkswagen	Golf/GTI	22	25,146	0.8749
148. Chrysler Corp	Chrysler Lebaron GTS	3	5,405	0.5550
149. Chrysler Corp	Dodge Diplomat	3	5,707	0.5257
150. General Motors	Pontiac Sunbird	45	105,984	0.4246
151. Ferrari	Testarossa	0	251	0.0000
152. Mitsubishi	Starion	0	159	0.0000
153. Maserati	Spyder	0	32	0.0000
154. Rolls-Royce/Bentley	Silver Spirit/Silver Spur	0	664	0.0000
155. Aston Martin	Saloon/Vantage/Volante	0	48	0.0000
156. Ferrari	Mondial	0	208	0.0000
157. Aston Martin	Lagonda	0	17	0.0000
158. Lotus	Esprit/Turbo	0	800	0.0000
159. Rolls-Royce/Bentley	Corniche/Continental/Mulsanne	0	766	0.0000
160. General Motors	Cadillac Allante	0	3,162	0.0000
161. Maserati	430	0	25	0.0000
162 Ferrari	348	0	117	0.0000

MODEL YEAR 1989 THEFT RATES FOR CARLINES PRODUCED IN CALENDAR YEAR 1989—Continued

Manufacturer	Make/Model (Line)	Thefts 1989	Production (Mfgr's) 1989	Theft rate (thefts/product) (1989) (1,000's)
163. Mercedes-Benz	300TE	0	2,484	0.0000
164. Maserati	228	0	12	0.0000

[FR Doc. 90-23771 Filed 10-5-90; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: October 2, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0298.
Form Number: ATF REC 5120/1.
Type of Review: Extension.
Title: Specific Export Bond-Distilled Spirits or Wine.
Description: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government (wine excise taxes).
Respondents: Business or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respoonse: 1.
Frequency of Response: Other.
Estimated Total Reporting Burden: 6 minutes.
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR DOC. 90-23747 Filed 10-5-90; 8:45 am]
BILLING CODE 4810-31-M

Internal Revenue Service

[Delegation Order No. 42 (Rev. 23)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.
ACTION: Delegation of authority.

SUMMARY: This delegation order clarifies the authority to execute consent agreements for fixing the period of limitations involving partnerships and S corporations and eliminates the delegated authority for certain job positions phased out due to reorganization of the function. The text of the delegation order appears below.

EFFECTIVE DATE: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, CC:AP:TS, Room 227, 901 D Street, SW., Washington, DC 20024-2518, telephone (202) 252-8165 (not a toll-free telephone number).

Order No. 42 (Rev. 23)

Effective date: 9-17-90

Authority to Execute Consents Fixing the Period of Limitations on assessment or Collection Under Provisions of the 1939, 1954, and 1988 Internal Revenue Codes

Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10; 26 U.S.C. 6229 (b); 26 CFR 301.6501(c)-1; 26 CFR 301.6502-1; 26 CFR 301.6901-1(d); and 26 CFR 301.7701-9; the authority to sign all consents fixing the period of limitations on assessment or collection is delegated to the following officials:

a. Associate Chief Counsels (Technical and International);
b. Assistant Commissioner (International);
c. Assistant Commissioner (Employee Plans and Exempt Organizations) but limited to Form 872-C, Consent Fixing Period of Limitation Upon the Assessment of Tax Under Section 4940 of the Internal Revenue Code;
d. Regional Counsel;
e. Regional Directors of Appeals;
f. Service Center Directors;
g. Director, Austin Compliance Center; and
h. District Directors

2. This authority may be redelegated but not below the following levels for each activity:

a. *Service centers*—Chief Accounting Branch; Chief, Quality Assurance; Chief, Correspondence and Processing; Revenue Officers and Collection Branch managers Grade GS-9 or higher; Chief, Classification function; and personnel assigned to the Examination Support Unit, Grade GS-11 or higher;

b. *Austin compliance center*—Underreporter Division—Branch Chiefs; Collection Division—all Branch Chiefs and Chief, Quality Assurance Staff; Examination Division—Chiefs, Examination Branches, Chief, Quality Assurance Staff, Chief, Classification Branch; and personnel assigned to the Windfall Profits Staff, GS-11;

c. *Collection*—Revenue Officers; Collection Support function managers Grade GS-9 or higher; Automated Collection Branch managers Grade GS-9 or higher;

d. *Examination*—Reviewers, Grade GS-11 or higher; Group managers (including large case managers); Chiefs, Planing and Special Programs and personnel assigned thereto Grade GS-11 or higher; Returns Classification Specialists and Returns Classification Officers, Grade GS-11;

e. *Criminal investigation*—Chiefs, Criminal Investigation Divisions, except in those districts where the Criminal Investigation Group managers report directly to the District Directors, the authority is limited to the District Director.

f. *Appeals*—Appeals Officers;

g. *Assistant Commissioner (international)*—Representatives at foreign posts; Revenue Agents, Tax Auditors, and Special Agents on foreign assignments; and levels indicated in c, d, and e above.

h. *EP/EO*—For Form 872-C, Exempt Organizations Technical Division Group Managers and Conferee/Reviewers and

i. *District employee plans and exempt organizations*—Reviewers, Grade GS–11 or higher; and Group Managers.

3. No authority is delegated under this Order to the District Counsel.

4. Delegation Order No. 42 (Rev. 22) effective February 9, 1988, is superseded.

Dated: August 31, 1990.

Approved

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90–23780 Filed 10–5–90; 8:45 am]

BILLING CODE 4830–01–M

[Delegation Order No. 209 (Rev. 4)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

SUMMARY: This delegation order extends the authority to execute settlement agreements involving partnership and S corporation affected items to appeals officers at service centers and the Austin Compliance Center. The previous delegation order limited such appeals officers authority to partnership and S corporation items only. In addition, authority to execute consents extending the period for filing a refund suit pursuant to request for administrative adjustment that has been denied by the Service is being redelegated. The text of the delegation order appears below.

EFFECTIVE DATES: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, CC: AP: TS, room 227, 901 D Street SW., Washington, DC 20024–2518, telephone (202) 252–8165 (not a toll-free telephone number).

Order No. 209 (Rev. 4)

Effective date: 9–19–90

Delegation of Authority in Partnership and S Corporation Matters

Pursuant to the authority vested in the Commissioner of Internal Revenue by IRC 6223, 6224, 6228, 6229, 6231(a)(7), 6232, 6243, and 6244, and Treasury Order 150–10:

1. Authority to sign the notice to partners or shareholders at the beginning of an administrative proceeding at the partnership or S corporation level with respect to a partnership or subchapter S item is delegated to revenue agents (grade GS–11 and higher).

2. Authority to sign the notice of final partnership or S corporation administrative adjustment is delegated to:

a. Chiefs and associate chiefs of appeals offices;

b. Appeals team chiefs as to their respective cases;

c. Appeals officers in service centers and the Austin Compliance Center.

d. Revenue agents (reviewers), (grade GS–11 and higher), in Examination Division or in Office of Taxpayer Service and Compliance, Assistant Commissioner (International); and

e. Revenue agents (grade GS–11 and higher) in service center and the Austin Compliance Center.

3. Authority to enter into and approve a written settlement agreement with one or more partners or shareholders with respect to the determination of partnership or subchapter S items and any items affected by such items for such partnership or S corporation taxable year is delegated to:

a. Chiefs and associate chiefs of appeals offices;

b. Appeals team chiefs, as to their respective cases; and

c. Appeals officers in service centers and the Austin Compliance Center but not as to their respective cases;

d. Revenue agents (reviewers), (grade GS–11 and higher), in Examination Division or Office of Taxpayer Service and Compliance, Assistant Commissioner (International); and

e. Revenue agents (grade GS–11 and higher) in service center and the Austin Compliance Center.

4. Authority to designate a Tax Matters Partner with respect to a partnership or a Tax Matters Person for an S Corporation, is delegated to:

a. Chiefs and associated chiefs of appeals offices;

b. Appeals team chiefs as to their respective cases;

c. Group managers in Examination Divison.

5. Authority to sign consents fixing the period of limitations on assessment and collection of any tax under subtitle A attributable to any partnership item, subchapter S item (or affected items), or to extend the period for filing a civil action for adjustment of partnership items pursuant to IRC 6228, is delegated to:

a. Appeals officers;

b. Appeals team chiefs, as to their respective cases; and

c. The Examination Division as indicated in Delegation Order No. 42, as revised.

6. To the extent that authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

The authority delegated herein may not be redelegated.

Delegation Order No. 209 (Rev. 3) (Correction), effective October 31, 1987, is hereby superseded.

Dated: August 31, 1990.

Approved.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 90–23781 Filed 10–5–90; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

VOA Broadcast Advisory Committee Meeting

The United States Information Agency announces an open meeting of the VOA Broadcast Advisory Committee meeting on October 11, 1990, 11 a.m.–3 p.m. at Voice of America, 300 C Street, SW., Washington, DC.

The Agenda will include:

Overview of activities since 6/21/90 meeting, discussion of proposed draft letter to members of Congress, targetting the private sector for Committee activities, private sector support for satellite dishes in Europe, private-sector support for printing of "VOICE" Magazine, status report on the study of international broadcasting and committee support for VOA's 50th anniversary celebration.

For additional information call Louise G. Wheeler or Nancy Starr at 619–6089.

Copies of minutes can be obtained by calling 619–6089.

Dated: October 2, 1990.

Douglas Wertman,

Committee Management Officer.

[FR Doc. 90–23703 Filed 10–5–90; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 34–90, Bankruptcy Procedures—Education Overpayments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, the veterans' benefit claimants and their representatives, with notice of VA's interpretation

regarding the legal matter at issue—(a) Has the Veterans Administration the authority to refrain from filing a claim against a debtor who is filing for bankruptcy if the amount owed is below a certain set figure; (b) Is it proper to charge entitlement in education cases without formal notification that the debt was discharged in backruptcy; (c) What date should be used in calculating the refund of monies withheld during the bankruptcy proceedings in the event of a discharge in bankruptcy; and (d) Can District Counsels be directed to notify the appropriate office of the actual discharge in bankruptcy?

EFFECTIVE DATE: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–78, dated October 25, 1977, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The context of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 34–90, Bankruptcy Procedures—Education Overpayments, requested by Controller, is as follows: HELD: (a) Subject to some exceptions, the VA does have the authority to refrain from referring to the Department of Justice a claim against the debtor who is filing for bankruptcy (1) if the amount owed is less than $600, or (2) if the cost of collecting the amount would be more than the amount itself, or (3) if the veteran has no assets; (b) It is proper to charge entitlement in education cases (1) when the District Counsel determines that the debt will not be referred to the Department of Justice, and (2) when formal notification is received that the debt was discharged from bankruptcy; (c) The date to use in calculating the amount of money that was withheld during the bankruptcy proceedings that may be used to set off the debt is the date the petition in bankruptcy was filed; and (d) The District Counsels have been directed to notify the appropriate office of the actual discharge in bankruptcy.

Dated: August 27, 1990

Raoul L. Carroll.

General Counsel.

[FR Doc. 90–23715 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 35–90, Limitations on Educational Assistance Under 38 U.S.C. 1781

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether payment of VA educational assistance benefits to veterans enrolled under the National Program of Apprenticeship for Prosthetists, Orthotists and Restoration Technicans is barred by the limitation contained in section 1781 of title 38, United States Code.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 12–73, dated November 21, 1973, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full test of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 35–90, Limitations on Educational Assistance under 38 U.S.C. 1781, requested by Chief Benefits Director, is as follows:

Held: Training provided under the National Program of Apprenticeship for Prosthetists, Orthotists and Restoration Technicans which is registered as meeting the basic standards and policies of the Bureau of Apprenticeship and Training of the Department of Labor is not within the limitation set out in 38 U.S.C. 1781 barring payment of educational assistance allowance. That limitation does not apply to apprentice and other on-job training programs.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23716 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 36–90, Limitations on Educational Assistance Under 38 U.S.C. 1781

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the

Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(a) Whether veterans in internships or residency training programs at a Veterans Administration Hospital or under the supervision of such hospital personnel are barred by section 1781 of title 38, United States Code, from receiving educational assistance allowances; and (b) whether veterans, who are federal employees in apprenticeship or other program conducted by government installations, are barred by section 1781 of title 38 from receiving educational assistance allowances.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11–73, dated August 16, 1973, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General; Counsel's opinion designated O.G.C. Prec. 36–90, Limitations on Educational Assistance Under 38 U.S.C. 1781, requested by Chief Benefits Director, is as follows:

Held: (1) The authority of the Administrator to conduct training for interms and residents is contained in section 4114(b) of title 38. Such training does not come within the purview of the Government Employees' Training Act, and it therefore is not within the scope of the limitation of section 1781 of title 38.

(2) Apprentice and other on-job training are not within the scope of the limitation of section 1781.

(3) We recognize that Federal agencies may conduct training programs, other than those involving substantial productive labor, under specific statutory authority as distinguished from those conducted under general provision of the Government Employees' Training Act. Such agencies are in a better position than the Veterans Administration to make at least the initial determination as to whether or not their program come under the Government Employees' Training Act. The Administrator would have the legal authority to promulgate regulations under which such determinations, absent unusual circumstances, may be accepted. Whether such an approach should be adopted is, of course, for administrative determination.

Dated: Augest 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23717 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 37–90, Applicability of Government Employees Training Act as a Limitation Under 38 U.S.C. 1781 to Payment of Educational Assistance Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—"Are veterans attending the Federal Mine Health and Safety Academy operated by the Bureau of Mines barred from receiving educational assistance allowances by 38 U.S.C. 1781?"

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–73, dated February 22, 1973, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with force of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 37–90, Applicability of Government Employees Training Act as a Limitation Under 38 U.S.C. 1781 to Payment of Educational Assistance Allowance, requested by Chief Benefits Director, is as follows:

Held: Veterans attending the Federal Mine Health and Safety Academy are barred by the provisions of section 1781 of title 38, United States Code, from receiving veterans educational assistance allowances.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23718 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 38-90, Liability of a Training Establishment for Overpayments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether a training establishment may be held liable for an overpayment to a veteran engaged in an approved on-job training program where the employer continued certifying the veteran as being engaged in his approved training program when, in actuality, the veteran had been switched to another program not approved for GI training.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Liberty, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 12-74, dated March 20, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 38-90, Liability of a Training Establishment for Overpayments, requested by Chief Benefits Director, is as follows:

Held: (1) Under VA Regulation 14200, a training establishment is considered by definition to be the same as a school or educational institution; (2) premised on the provisions of section 1785 of title 38, United States Code, a training establishment may be held liable for overpayments resulting from failure of the training establishment to report termination of a veteran in an approved on-job training program and for false certifications made to the VA; (3) in view of the provisions of VA Regulation 14009, an overpayment may be declared against the training establishment; (4) based on the provisions of VA Regulation 5214, and since the United States Attorney has declined criminal prosecution, procedures may be undertaken to collect the overpayment; (5) the liability of the training establishment for repayment of the unauthorized training assistance allowance is independent of the liability of the veteran; and (6) any amount collected from the training establishment shall be reimbursed if the overpayment is recovered from the veteran.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23719 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 39-90, Payment of CLEP Test Administration Fees

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether authority exists for the Veterans Administration to provide funds to pay for the administration of College Level Examination Programs (CLEP) tests to veterans eligible for GI Bill benefits.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11-74, dated March 18, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 39-90, Payment of CLEP Test Administration Fees, requested by Chief Benefits Director, is as follows:

Held: The utilization of College Level Examination Program (CLEP) tests by veterans eligible for GI Bill benefits would be legally permissible under the

authority of section 1663 of title 38 where the objective of the examination is the counseling of a veteran to enable him to be placed in a program of education best suited for him. It would not be legally permissible, however, to authorize benefits for the administration of such a test for the purpose of enabling the counselee to obtain advanced credit, nor would it be legally permissible to authorize benefits for administration of a test for the purpose of enabling the counselee to be awarded a degree as the result of passing such an examination.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23720 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 41-90, Continuity of Service Within the Meaning of VA Regulation 11040

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Do interruptions in periods of active service by reason of the situations enumerated in VA Regulation 1015, or due to an individual being placed in an excess leave status, break the continuity of the period of active service of more than 180 days required for educational benefit purposes under 38 U.S.C. 1652(a) and VA Regulation 11040?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretation on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 9-74, dated March 8, 1974, is reissued as Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 41-90, Continuity of Service Within the Meaning of VA Regulation 11040, requested by Chief Benefits Director, is as follows:

Held: For the purpose of computing 181 days of continuous service under VA Regulation 11040, time spent in excess leave, or for any of the reasons set out in VA Regulation 1015, does not constitute a break in active duty or interrupt the continuity of the period of active duty service.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23721 Filed 10-05-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretations of the General Counsel-Precedent Opinion 42-90, Nonapplication of Section 1789(b)(4), Title 38, U.S.C.

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does title 38, section 1789(b)(4), apply to a specific set of facts concerning the proposed offering of a course by an educational institution?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 24-75, dated July 29, 1975, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 42-90, Nonapplication of section 1789(b)(4), title 38, U.S.C., requested by Chief Benefits Director, is as follows:

Held: In answer to the question prescribed, it is our opinion that where a course is offered pursuant to a contract entered into between a nonprofit educational institution and another educational institution or organization which permits (a) outside recruiters furnished by the outside institution or organization to be utilized to obtain students for the course; (b) payments of substantial fees to the other institutions or organization for material with "profits" paid to the nonprofit school

offering the course; (c) conducting of the training in nonacademic surroundings, such as motels; or (d) the expansion of course offerings by the nonprofit institution well beyond its normal boundary, then such a course clearly does not fall within the criteria of the exception in clause (4) of 38 U.S.C. 1789 and must comply with the 2-year operation requirement of section 1789(a) of title 38.

It is also our opinion that, when the Administrator is required to make a determination concerning the exemption of courses offered by nonprofit institutions from the operation of the 2-year requirement, and the nonprofit institution has entered into any arrangement which would raise questions concerning its status under 38 U.S.C. 1789(b)(4), the Administrator has the legal authority to examine the effect of such arrangement on the school's claim to the exemption afforded by section 1789(b)(4). Where a determination is made that the questioned arrangement does not come within the Congressional intent of the exemption, the Administrator may not approve the enrollment of veterans and dependents in such a course until it meets the 2-year operation requirement.

On November 17, 1975, this opinion was approved by the Administrator of Veterans Affairs.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23722 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 43-90, Work-Study Program—Proper Utilization and Supervision of Veteran-Students

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) May veteran-students properly be assigned to work for any organization which is engaged in rendering services to veterans and dependents? (2) If so, what would constitute proper supervision by a VA employee as required by subsection (a)(1) of section 1685? Would *indirect* supervision as outlined by Veterans Assistance Service meet the intent of the law? (3) Is it appropriate to assign veteran-students to work in the Veterans Cost of Instruction (VCI) Outreach Program rather than in paperwork processing at educational institutions (subsection (a)(2) of section 1685)?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 18-75, dated June 20, 1975, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 43-90, Work-Study Program—Proper Utilization and Supervision of Veteran-Students, requested by Chief Benefits Director, is as follows:

Held: (1) Under 38 U.S.C. 1685, work-study students must work for VA and may not work for an organziation just because that organization renders services to veterans and dependents.

(2) The hours of work and the quality and nature of the work must be under the direct supervision and control of a VA employee.

(3) Subject to certain restrictions, work-study students may be assigned to assist in outreach services in the VCI program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23723 Filed 10-5-90; 8:45 am]

BILLING CODE 8230-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 44-90, Application of North Carolina Sales Tax to Sales of Books and Supplies to VA Vocational Rehabilitation Students

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Is the VA liable for the North Carolina State sales tax on books furnished to veterans enrolled in the VA Vocational Rehabilitation program?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion,

previously issued as General Counsel Opinion 13–75, dated February 10, 1975, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 44–90, Application of North Carolina Sales Tax to Sales of Books and Supplies to VA Vocational Rehabilitation Students, requested by District Counsel/Winston-Salem, NC, is as follows:

Held: The VA is not liable for the sales tax on books furnished to veterans enrolled in the VA Vocational Rehabilitation program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23724 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 45–90, Application of Dual Compensation to Veteran-Student Services Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Should there be a reduction in service retired pay under the Dual Compensation Act, 5 U.S.C. 5532, because of a veteran's receipt of a work-study allowance under 38 U.S.C. 1685?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–75, dated December 13, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 45–90, Application of Dual Compensation to Veteran-Student Services Program, requested by Chief Benefits Director, is as follows:

Held: The Congress never intended that the allowances paid to veteran-students under the work-study program (38 U.S.C. 1685) should be considered wages, nor that such veteran-students should be considered Federal employees (except for the limited purposes set forth in the statute). Manifestly, the question of a reduction in retirement pay under the Dual Compensation Act is for consideration by the military. And, we agree with the Coast Guard that a binding interpretation of the application of the Dual Compensation provisions to the veterans' work-study program should ultimately be sought from the Comptroller General of the United States. We presume that such submission will be made by the Coast Guard, some other branch of the military, or by the Department of Defense.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23725 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 46–90, Application of 38 U.S.C. 1775, VAR 14200, and VAR 14280

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Should 38 U.S.C. 1775 be applied when approving courses offered by educational institutions which are candidates for accreditation by a nationally recognized accrediting agency? (2) May eligible persons enrolled in independent study courses offered by a school which is a candidate for accreditation by one of the six regional accrediting agencies be paid on the basis of VAR 14280?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel

Opinion 14–76, dated April 28, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA published summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official names above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 46–90, Application of 38 U.S.C. 1775, VAR 14200, and VAR 14280, requested by Chief Benefits Director, is as follows:

Held: (1) Section 1775 of title 38 should not be applied to educational institutions which are candidates for accreditation until such time as they are fully accredited.

(2) Eligible persons enrolled in independent study courses offered by a school which is a candidate for accreditation may not be paid on the basis of VAR 14280 until the institution is fully accredited.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23726 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 47–90, Utilization of a Work-Study Veteran-Student To Provide Transportation for a Service-Disabled Veteran

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May a work-study veteran-student be utilized to provide transportation to school for a service-disabled veteran training under the provisions of chapter 31 of title 38, United States Code?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 12–76, dated March 23, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 47–90, Utilization of a Work-study Veteran-student to Provide Transportation for a Service-disabled Veteran, requested by Chief Benefits Director, is as follows:

Held: There is no legal authority under 38 U.S.C. 1685 for the utilization of a work-study veteran-student to provide transportation to school for a service-disabled veteran training under the vocational rehabilitation program.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23727 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 48–90, Prison Training

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Must educational assistance be provided incarcerated veterans even though the State provides full tuition and/or subsistence for their education? (2) May the Veterans Administration, under certain circumstances, restrict educational assistance benefits without specific legislation authorizing such restriction?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 7–76, dated March 2, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be

followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 48–90, Prison Training, requested by Chief Benefits Director, is as follows:

Held: (1) The fact that the State pays the full tuition for incarcerated veterans to attend college or other schools for training does not in any way abrogate their entitlement to educational assistance benefits if otherwise so qualified.

(2) Since the law is silent as to the breakdown of how a veteran must spend his educational allowance and there is no provision for reduction of such an allowance because of incarceration, specific legislation would be necessary to restrict assistance benefits.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23728 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 49–90, Discontinuance of Educational Benefits Payments

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA.This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Is there legal authority to pay educational benefits to the end of the term when a decision has been made under VAR 14207 to terminate enrollments and benefits effective prior to the end of the term?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 5–76, dated March 9, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 49–90, Discontinuance of Educational Benefits Payments, requested by Chief Benefits Director, is as follows:

Held: (1) Unless there were to be a change in current regulations there is no authority to pay educational benefits to the end of the term in view of the decision already made pursuant to VA Regulation 14207 to terminate enrollments and benefits effective prior to the end of the term.

(2) While the Administrator has delegated his authority to act in the case of violations under section 1790(b), he does reserve to himself the final determination authority where he deems it appropriate to exercise such a decision. We believe, however, that such an exercise of authority should not be made absent a strong showing for such action to be taken. We do not believe such to be the case here, since the discretionary authority, which has been exercised by those to whom the authority was delegated, was proper and the school has failed to exhaust the administrative remedies available to it.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23729 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 50–90, Eligibility for Educatinal Benefits Under Chapter 32—12 Months' Participation Restriction

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal mater at issue—(1) A serviceperson suspends participation in the Post-Vietnam Era Veterans' Educational Assistance Program due to a hardship situation without participating for 12 months. The servicepersons resumes participation, but does not have sufficient months left in the current obligated tour to provide 12 months' participation. Upon discharge, the person had participated for 11 months. Would there be eligibility for chapter 32 educatinal benefits? (2) A serviceperson has completed the obligated period of active duty or 6 years of active duty which began after December 31, 1976 (whichever is less), as provided for in 1631(a)(4) of chapter 32. He/she is still on active duty and is participating by making monthly contributions to the fund as provided for in section 1622(a). However, less than 12 monthly contributions has been made. Is the person entitled to chapter 32 educational benefits before 12 consecutive monthly contributions have been made?.

EFFECTIVE DATES: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in

adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11–77, dated December 8, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 50–90, Eligibility for Educational Benefits Under chapter 32—12 Months' Participation Restriction, requested by Controller, is as follows:

Held: (1) The individual who has not participated for 12 consecutive months, who suspends participation because of a hardship situation, and upon discharge has participated for 11 months would be eligible for chapter 32 educational benefits. Our opinion is based upon the following:

a. Under the provisions of section 1621(b), the individual is permitted to suspend participation before completing 12 months of participation on grounds of personal hardship.

b. It is clear that where the individual suspends participation because of personal hardship he or she has not forfeited the right to benefits under chapter 32.

c. Benefits are payable where the individual is discharged prior to the completion of the 12 months' requirement.

(2) The law, as well as pertinent excerpts from the Senate Veterans Affairs Committee report to accompany S. 969 (S. Rep. No. 1243, 94th Cong., 2d Sess. 104, 105), all speak of the 12 months' consecutive participation requirement. These are directed primarily at points in time when the individual can make a decision to suspend participation or to disenroll in the program. In the absence of any specific expression to the contrary, we are of the view that the Administrator may, in an individual's second enlistment, authorize a shorter period of time before the individual may become eligible for chapter 32 participation. Therefore, a serviceperson who has completed an obligated period of active duty, but who is still on active duty and participating in the program by making monthly contributions, may, upon a determination by the Administrator, be eligible for educational benefits before 12 consecutive monthly contributions have been made.

Dated: August 27, 1990.

Raoul L. Carroll,

General counsel.

[FR Doc. 90–23730 Filed 10–5–90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 51-90, School Liability

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Should the Veterans Administration continue its present practice of withholding benefits from veterans and dependents reentering training, and reimburse educational institutions, where overpayments have been declared against such veterans and dependents? (2) Should our procedure be revised, as suggested by the General Accounting Office, to provide that, where the overpayment has been collected from the school, the veteran's or dependent's indebtedness should be written off?.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 10–77, dated October 29, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veteran's benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsels' opinion designated O.G.C. Prec. 51–90, School Liability, requested by Controller, is as follows:

Held: Based upon the legislative history of pertinent law governing the chapter 34 and chapter 35 educational assistance programs, VA would continue to withhold benefits for overpayments from individuals reentering training, even though the amount of the overpayment has already been collected from the educational institution, and reimburse the school pursuant to 38 U.S.C. 1785. To purge the veteran's or other eligible person's account would not follow the Congressional intent.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23731 Filed 10–5–90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 52-90, Application of 38 U.S.C. 1781 to the Related Instruction Portion of an Apprentice Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Does the limitation of section 1781 of title 38, United States Code, apply to programs of apprenticeship and other on-the-job training given by an agency of the United States Government where some part or all of the period on which benefit payments may otherwise be based consists of related instruction for which the Government pays the tuition?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 9–77, dated October 12, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 52–90, Application of 38 U.S.C. 1781 to the Related Instruction Portion of an Apprenticeship Program, requested by Chief Benefits Director, is as follows:

Held: Apprenticeship and other on-job training programs do not come within the scope of the limitation of 38 U.S.C. 1781(a)(2) regarding training paid under the Government Employees Training Act for a person in receipt of full salary while so training.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–23732 Filed 10–5–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 53–90, School Liability-Reporting Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) If an eligible student ceases pursuit without officially withdrawing from a course, may a school be liable for any portion of the resulting overpayment if the school's change of status report is received by the Veterans Administration within 30 days after the certifying official knew of the change, which may not be until the end of the term? (2) Pursuant to an annual inspection, may schools be granted a one-year certificate which, in effect, would guarantee that the school not be held liable for administrative delays and clerical errors since we have found progress policy and reporting procedures to be satisfactory?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 7–77, dated November 22, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary fo the General Counsel's opinion designated O.G.C. Prec. 53–90, School Liability-Reporting Requirements, requested by Chief Benefits Director, is as follows:

Held: (1) There are many ways in which a school can determine that a student has ceased pursuit of his or her program of education even though he or she has not officially withdrawn. Examples of such methods are attendance records, grading reports, last date on which examination or other papers are filed, last day of activity recorded in the instructor's records, or a statement from the student as to the last date of his or her attendance. Thus, we believe that, with these many potential sources of notice available to the school, a date when a student interrupts or terminates his or her pursuit without officially withdrawing should be ascertainable and the 30-day rule should be applied as of the date when the school through the exercise of due diligence could have determined that the student was no longer pursuing his or her program.

(2) We do not find any legal authority under which a school could, after the annual inspection, be guaranteed that it would not be held liable for administrative delays or clerical errors where VA has found its progress policy and reporting procedures to be satisfactory. We believe that each

situation must be determined on its individual merits. As a matter of practice, we understand that schools are currently permitted some leeway in the area of clerical errors and administrative delays.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23733 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 54-90, Enrollment Limitations—38 U.S.C. 1673(a)(2)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) May the Veterans Administration approve and pay benefits for enrollments after November 1, 1975, in courses for which valid justification, required by section 1673(a)(2) of title 38, United States Code, has not been submitted, where such enrollments occurred prior to notice to the school that its justification was invalid? (2) If the answer to the first question is in the negative, is equitable relief under 38 U.S.C. 210(c) available for consideration in such cases?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 6-77, dated November 22, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 54-90, Enrollment Limitation—38 U.S.C. 1673(a)(2), requested by Chief Benefits Director, is as follows:

Held: The Veterans Administration has authority to pay benefits to those veterans who have eligibility and who were properly enrolled in certain sales or sales management courses or in a course with a vocational objective prior to the first date the school was put on notice that its employment justification required under 38 U.S.C. 1673(a)(2) was invalid. Equitable relief under 38 U.S.C. 210(c) is for consideration.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23734 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 55-90, Proper Interpretation of 38 U.S.C. 1784, 1785, and VA Regulations 14009 and 14203

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Can an eductional institution be allowed 30 days from the date of a veteran's reduction or termination of training or 30 days from the end of an official registration period or short drop/add period (not to exceed 30 days) at the beginning of a term to report the reduction or termination to the Veterans Administration? (2) Can an educational institution, which does not timely report a veteran's reduction or termination, be held liable for the entire resulting overpayment?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 2-77, dated September 17, 1976, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 55-90, Proper Interpretation of 38 U.S.C. 1784, 1785, and VA Regulations 14009 and 14203, requested by Chief Benefits Director, is as follows:

Held: (1) Allowing an educational institution 30 days from the date of a veteran's reduction or termination of

training is a reasonable period of time and would meet the 38 U.S.C. 1784 requirement of "without delay"; and allowing an educational institution a period not to exceed 30 days from the beginning of a new term to report a veteran's reduction in course load or termination of training or, where applicable, from the end of the school's drop/add period (not to exceed 30 days) to report a veteran's reduction in course load, represents a reasonable period of time.

(2) There is no legal basis to hold an educational institution liable for any benefit, including advance payment or prepayment, paid to a veteran prior to the end of the 30-day period allowed schools to report a reduction or termination.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23735 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 40-90, Payment of Educational Assistance Allowances to Individuals Participating in the Health Professions Scholarship Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—May individuals participating in the Health Professions Scholarship Program be paid GI Bill Educational assistance benefits while enrolled in such a program?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 10-74, dated March 18, 1974, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

The VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 40-90, Payment of Educational Assistance Allowances to Individuals Participating in the Health Professions Scholarship Program, requested by Administrative Law Division, Office of the Judge Advocate General, Department of the Air Force, is as follows:

Held: Where the individual meets all of the requisite requirements, including active duty service of more than 180 days, attendance at an approved institution, and pursuit of an approved program of education, payments may be made to him under the GI Bill. It is further held that payment of such benefits must be charged against the individual's period of entitlement.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-23755 Filed 10-5-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 195
Tuesday, October 9, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITIES FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 16, 1990.

PLACE: 2033 K St., N.W., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application of the Chicago Board of Trade for contract designation in Two-Year Treasury Note futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–23872 Filed 10–4–90; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, October 16, 1990.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–23873 Filed 10–4–90; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, October 16, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–23874 Filed 10–4–90; 11:18 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, October 26, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–23875 Filed 10–4–90; 11:18 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION:

TIME AND DATE: 10 a.m., Wednesday, October 10, 1990 (Recess at noon and resume at 2:00 p.m. as necessary.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: All-Terrain Vehicle Vountary Standards Status Report.

The staff will brief the Commission on the All-Terrain Vehicle Voluntary Standards/Lateral Stability Status Report.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONIAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301–492–6800.

Dated October 3, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–23895 Filed 10–4–90; 1:54 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 11, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: ANPR on Infant Bean Bag Cushions.

The Commission will consider an Advance Notice of Proposed Rulemaking (ANPR) concerning the risk of injury and death which may be presented by infant cushions filled with foam plastic beads or other granular material.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: October 3, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–23896 Filed 10–4–90; 1:54 pm]

BILLING CODE 6355–01–M

FEDERAL COMMUNICATIONS COMMISSION

October 4, 1990.

FCC To Hold Open Commission Meeting, Thursday, October 11, 1990

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Thursday, October 11, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W. Washington, DC.

Item No., Bureau, and Subject

1—Mass Media—Title: Definition of a Cable Television System (MM Docket No. 89–35). Summary: The Commission will consider whether to issue a *Report and Order* in this proceeding, concerning interpretation of the statutory definition of a cable television system.

2—Mass Media—Title: *Report and Order and Further Notice of Proposed Rulemaking* in GEN Docket Nos. 90–54 and 80–113; Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands. Summary: The Commission will consider whether to revise and conform its rules governing MDS, OFS, and ITFS, which affect "wireless cable" service.

3—Private Radio—Title: Amendment of Parts 13 and 80 of the Commission's Rules to implement the Global Maritime Distress and Safety System (GMDSS) to improve the safety of life at sea. Summary: The Commission will consider whether to propose to amend the maritime mobile service rules to incorporate the provisions of the GMDSS for United States vessels. The changes would affect all cargo ships of 300 gross tons and over and all passenger ships that carry more than 12 passengers, regardless of size.

4—Private Radio—Title: Construction, Licensing, and Operation of Private Land Mobile Radio Stations (RM–6910). Summary: The Commission will consider adoption of a Notice of Proposed Rule Making addressing compliance rules and

procedures relating to station construction and operation, license cancellation, and license reinstatement in the Private Land Mobile Radio Services. The Commission will consider whether to establish a preference for relicensing recovered channels.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

Issued: October 4, 1990.

William F. Caton,

Acting Secretary.

[FR Doc. 90–23907 Filed 10–4–90; 2:13 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" 5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, October 2, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

A recommendation concerning an administrative enforcement proceeding.

Matters relating to the probable failure of certain insured banks.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,606

American Diversified Savings Bank, Costa Mesa, California

Application of Pearl River County Bank (In Organization), Picayune, Mississippi, for Federal deposit insurance, for consent to purchase assets and assume the liability to pay deposits made in the Picayune and Poplarville Branches of Southeast Mississippi Bank, Quitman, Mississippi, and for consent to establish one branch.

Matters relating to an assistance agreement with a depository institution.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Vice Chairperson Andrew C. Hove, Jr., concurred in by Director Robert L. Clarke (Comptroller of the Currency), Mr. John Downey, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 3, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90–23856 Filed 10–4–90; 11:18 am]

BILLING CODE 6714-01-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, October 16, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30800 (Sub-No. 19), *UP/MKT Merge—MKT Debentures—"Available Income" Calculation*

Docket No. 37038, *Bituminous Coal—Hiawatha, Utah, to MOAPA, Nevada, and Docket No. 37409, Aggregate Volume Rate On Coal—Acco, Utah, to MOAPA, Nevada*

Finance Docket No. 31717, *Iowa Power, Inc.—Construction Exemption—Council Bluffs, Iowa,* and Finance Docket No. 31716, *Iowa Power, Inc.—Petition Under 49 U.S.C. 10901(d),* and Docket No. AB–298 (Sub-No. 1X) *Iowa Southern Railroad Company—Exemption—Abandonment in Pottawattamie, Mills, Fremont, and Page Counties, Iowa*

Finance Docket 31591, *Wheeling Acquisition Corporation—Acquisition and Operation Exemption—Lines of Norfolk & Western Railway Company* and Finance Docket No. 31675, *Wertheim Schroder & Co., Incorporated—Continuance in Control Exemption—Wheeling & Lake Erie Railway Company*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–23897 Filed 10–4–90; 1:55 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 8, 15, 22, and 29, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 8

There are no Commission meetings scheduled for the Week of October 8.

Week of October 15—Tentative

Monday, October 15

10:00 a.m.
Briefing on Regulatory Impact Survey Recommendations (Public Meeting)

2:00 p.m.
Briefing on Decoupling Siting Requirements from Future Designs and Update of Source Term Matters (Public Meeting)

Wednesday, October 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Petitions to Intervene and Requests for Hearing in Shoreham Operating License Amendment Proceeding (postponed from October 2)

Week of October 22—Tentative

Thursday, October 25

10:00 a.m.
Periodic Briefing on Industry Implementation of Generic Safety Issues (Public Meeting)

Friday, October 26

10:00 a.m.
Briefing on NUMARC's Perspective of the State of the Nuclear Industry (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 29—Tentative

Monday, October 29

10:00 a.m.
Briefing on Issued Raised by the Provision Requiring Title Transfer of Low Level Waste (Public Meeting)

Tuesday, October 30

10:00 a.m.
Briefing on Nonprescriptive Nuclear Safety Regulation (Public Meeting)

Wednesday, October 31

10:00 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording) (301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: October 3, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–23871 Filed 10–4–90; 11:18 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 55, No. 195
Tuesday, Ocotber 9, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1765

RIN 0572-AA31

Telephone Materials, Equipment, and Construction—Telephone Program

Correction

In rule document 90-2387 beginning on page 3570 in the issue of Friday, February 7, 1990, make the following correction:

§ 1765.86 Certification addendum.

On page 3575, in the third column, in the 13th line, the section heading is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Chapter XVI

Rural Electrification Administration

7 CFR Chapter XVII

Electric and Telephone Programs, Redesignation of Regulations

Correction

In rule document 90-22901 beginning on page 39393 in the issue of Thursday, September 27, 1990, make the following corrections:

§ 1745.1 [Removed]

1. On page 39395, in the second column, among the part headings preceding amendatory instruction 13, the section heading following part 1728 should read as set forth above.

§ 1735.1 [Corrected]

2. On the same page, in the third column, in the last line of paragraph (a) of § 1735.1 "Telephones" should read "Telephone".

3. On page 39396, in the first column, in the table, at entry "1749.20-1749.22" the first line of the second-column entry should read "1737.20-1737.22".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900798-0235]

RIN 0648-AD59

Snapper-Grouper Fishery of the South Atlantic

Correction

In proposed rule document 90-22415 beginning on page 39023 in the issue of Monday, September 24, 1990, in the third column, under the "**DATES**" caption, the date should read "November 2, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Harold Bennett

Correction

In notice document 90-22150 beginning on page 38574 in the issue of Wednesday, September 19, 1990, in the second column, in the second from last paragraph, on the first and second lines "26 Ironwood Street" should read "25 Ironwood Street".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Louisiana Coastal Management Program, et al.; Intent to Evaluate Performance

Correction

In notice document 90-20641 beginning on page 35923 in the issue of Tuesday, September 4, 1990, the heading of the document should read as set forth above and the **Federal Register** document number appearing at the end of the document should read "FR Doc. 90-20641".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0033]

Over-the-Counter Dental and Oral Health Care Drug Products for Antiplaque Use; Safety and Efficacy Review

Correction

In proposed rule document 90-21986 beginning on page 38560 in the issue of Wednesday, September 19, 1990, make the following corrections:

On page 38562, in the second column, in the second full paragraph, in the first line, "view" should read "review".

On the same page, in the third column, in the first full paragraph, in the second line, "53 FR 50940" should read "53 FR 50949"; and in the last line of that paragraph, "pursuant" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 90-22139 beginning on page 38583 in the issue of Wednesday, September 19, 1990, make the following correction:

On page 38584, in the third column, in the first line, "split" should read "splint".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90M-0279]

CIBA Vision Corp.; Premarket Approval of CIBA Vision® Cleaner

Correction

In notice document 90-22138 beginning on page 38582 in the issue of Wednesday, September 19, 1990, make the following corrections:

On page 38582, in the third column, under **SUMMARY**, in the fifteenth line, "Contract" should read "Contact"; and under **DATES**, in the second line, "October 9, 1990." should read "October 19, 1990."

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Notice of Systems of Records

Correction

In notice document 90-19898 beginning on page 34816 in the issue of Friday, August 24, 1990, make the following corrections:

1. On page 34826, in the third column, above the heading "**SYSTEM NAME:** insert the system of records number "**TVA-13**".

2. On page 34837, in the first column, above the heading "**SYSTEM NAME:**" change the system of records number from "**TVA 31**" to "**TVA-32**".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 90-17]

Minimum Capital Ratios

Correction

In rule document 90-22488 beginning on page 38797 in the issue of Friday, September 21, 1990, make the following correction:

On page 38800, in the second column, in amendatory instruction 5, in the first line "Section 2.6" should read "Section 3.6".

BILLING CODE 1505-01-D

federal register

Tuesday
October 9, 1990

Part II

Department of Transportation

Urban Mass Transit Administration

49 CFR Part 665

Bus Testing Program; Modification of Interim Final Rule; Interim Final Rule

DEPARTMENT OF TRANSPORTION

Urban Mass Transportation Administration

49 CFR Part 665

[Docket No. 89-B]

RIN 2132-AA30

Bus Testing Program; Modification of Interim Final Rule

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Interim final rule.

SUMMARY: On May 25, 1989, the Urban Mass Transportation Administration (UMTA) published a proposed rule on its bus testing facility program, and issued interim guidance on August 23, 1989, to ensure timely implementation of the program. Based on experience gained from the facility as it progresses toward full operation, today's document clarifies and expands the scope of those interim procedures for the bus testing program.

DATES:

Effective date: These procedures become effective November 8, 1990.

Comment due date: Comments must be submitted by January 7, 1991.

FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090; for legal issues, Daniel Duff, Assistant Chief Counsel for Legislation and Regulation, Office of the Chief Counsel, (202) 366-4011. The test facility can be reached by contacting James C. Wambold, Director of Automotive Research, (814) 863-1889.

ADDRESSES: For comments, UMTA, Department of Transportation, Office of the Chief Counsel, Docket No. 89-B, 400 Seventh Street, SW., Room 9316, Washington, DC 20590. For the bus testing facility, Penn State Automotive Research Division, Research Building B, University Park, PA 16802.

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 1989, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no funds obligated by UMTA after September 30, 1989, under the Urban Mass Transportation Act of 1964, as amended, may be used to purchase a "new bus model" unless a bus of such model has been tested at the facility.

To ensure that bus testing procedures were in place before the statutory deadline of October 1, 1989, the agency indicated in the NPRM that it would issue interim guidance in advance of the agency's final rule. The guidance was provided in the interim final rule issued on August 23, 1989 (54 FR 35158). Comments on the interim procedures were due on November 21, 1989. However, due to the complex nature of the issues involved, a specific request on behalf of the industry by the American Public Transit Association, and UMTA's belief that it should give commenters maximum opportunity to comment, the comment period was extended for 90 days.

The agency's NPRM was expansive, proposing that all vehicles used in mass transit after April 2, 1987 (the effective date of STURAA) be subject to testing at the facility. In addition, the agency specifically requested comment on a range of issues.

The interim final rule narrowed the scope of the proposed rule somewhat, and provided that, during the interim start-up period, only certain larger-sized buses would be subject to the bus testing procedures. The interim final rule also stated that the agency, after appropriate notice and as conditions warranted, might expand the scope of vehicles to be tested at the facility during the interim period. In this connection, we have decided to make certain changes in the interim final rule both in terms of types of vehicles to be tested and extension of the interim period. Comments are being solicited on these modifications, and UMTA will consider them along with previously received comments before it issues a final rule.

II. Overview of the modifications

This section contains a discussion and summary of the issues to be modified.

A. Length of the transition period (§ 665.3). The transition period for the bus testing facility began October 1, 1989, with the anticipation that a final rule would be published no later than September 1, 1990. Information gathered from the start-up operations of the bus testing facility, as well as from comments to the docket, indicate that additional time is needed before the facility will be ready to test all sizes of buses. Therefore, the interim period is extended to no later than July 1, 1991, by which time the agency intends to publish a final rule containing the final requirements for the bus testing program.

UMTA, however, reserves the right to end the interim period earlier than July 1, 1991. Before doing so, however, the agency would publish a final rule outlining the specific final requirements applicable to this program, and establish the effective date for all operations at the bus testing facility in accordance with traditional notice requirements. Furthermore, the agency also continues to reserve the right, after appropriate notice, to make further modifications to the interim period procedures.

B. Types of vehicles covered in interim program (§ 665.11). One of the key issues identified in the proposed rule was the definition of "bus," which determines the vehicles to be tested at the facility. The agency had proposed a comprehensive definition ranging from large buses to small vans. During the start-up phase of the facility, however, the agency recognized that there were certain limitations affecting the ability of the facility to test comprehensively all vehicles, and thus only three categories of vehicles were covered by the interim final procedures.

The operations of the facility, however, now are able to accommodate an additional category of vehicle. Accordingly, the medium-duty bus test category identified in the interim final rule at § 665.11(b)(3) is expanded by this modification from only the purpose-built medium-duty bus type designs to include also the medium-duty body-on-chassis bus type designs. To reflect this change, the new medium-duty bus type category is defined at new § 665.11(b)(3) as medium-duty buses with a minimum service life of seven years or 200,000 miles. This change now makes all new model medium-duty buses subject to bus testing as of the effective date of this document, and subject to the requirements of the bus testing program contained in 49 CFR part 665.

C. Definitions of new bus model and major changes in configuration or components (§ 665.5). Under the interim procedures, a new bus model is defined as one which has not been used in mass transportation service in the United States before October 1, 1988, or one which has been used in mass transportation service but which, after September 30, 1988, is being produced with a major change in configuration or components. In this document, the definition of a new bus model is being modified in response to questions on what constitutes a major change in configuration or components sufficient to require a bus to be tested at the facility.

Specifically, the second part of the definition of "New Bus Model" in § 665.5 is revised by modifying the phrase "* * * is being produced with a change of major components or significant structural modifications" to read "* * * is being produced with a major change in configuration or components." In light of this modification, the definition of "major changes in configuration or components" is deleted and is being replaced with separate definitions of the new phrases added to the definition of "new bus model,"—"major change in components" and "major change in configuration."

Major change in configuration is defined as a change which may have a significant impact on vehicle handling and stability, or structural integrity. A significant impact is any effect which could result in an unsafe vehicle characteristic, such as a dangerous operating condition or failure of a structural element. A major change in components is defined as a change in one or more of the vehicle's major components such as the engine, transmission, suspension, axle or steering.

Within the context of these definitions, the following examples of "major changes" are provided; changes such as these would require a vehicle to be tested at the facility.

1. Examples of a major change in configuration include, but are not limited to:

a. Replacement of metal structural elements with new materials, such as composites or wood.
b. Fabrication of structural elements in a substantially different manner, such as two piece mullion instead of a single one.
c. Relocation of the wheelchair lift from the back of the bus to the front (or vice versa).
d. Changing the width (96 inches to 102 inches) or length (35 foot to 40 foot) of the bus (or vice versa).
e. Change in vehicle weight distribution that changes the center of gravity, *e.g.*, raising the roof or adding extra weight on the roof.
f. A bus made from a different shell material, *e.g.*, a change from aluminum to a composite material.
g. A bus with a major change in floor height, *e.g.*, a new low floor bus.

2. Examples of a major change in engine include, but are not limited to:

a. An engine design that has not been used in transit service.
b. Powerplant configuration change such as a change from a "T" Drive to an angle drive (or vice versa).

3. Examples of a major configuration in transmission include, but are not limited to:

a. A transmission design that has not been used in transit service.
b. Change from "V" drive to in-line (or vice versa).
c. Engine/transmission combination that results in a major change in the torque delivered to the rear drive axle.

4. Examples of a major change in axle include, but are not limited to:

a. Change in total drive train plus rear axle to provide for major torque change at drive wheels.
b. Major redesign of rear drive axle.
c. Change from a two-axle design to a three-axle design (or vice versa).
d. Change in location of bus drive axle, or going from a rear to front drive (or vice versa).

5. Examples of a major change in suspension include, but are not limited to:

a. Change in front suspension from solid axle to independent suspension (or vice versa).
b. Change from standard axle suspension system to "A" frame or "H" frame at rear.
c. Major change in distance between air bags in support system.
d. Addition or deletion of radius rods and sway bars, or changing from solid radius rod to hydraulic and spring action bars.
e. Addition or removal of the bus kneeling system.

6. Examples of major change in steering include, but are not limited to:

a. Addition or deletion of power assist steering system.
b. Major change in the number of turns of steering wheel from lock-to-lock.

The agency recognizes that these examples do not cover, nor are they intended to cover, every situation. If a manufacturer or grantee is uncertain whether a change is of a type to require testing at the facility, either party should refer the specific issue to UMTA for guidance. Inquiries should be addressed to the Office of Technical Assistance and Safety at the address provided in the Addresses section of this Preamble.

III. Regulatory Analyses and Certifications

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and UMTA has determined that this is not a major rule. As promulgated, this rule will not result in an annual effect on the economy of $100 million or more, nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises in domestic or export markets.

B. Regulatory Evaluation

This regulation is significant under the Department Regulatory Policies and Procedures because of the potential high level of public interest. A final regulatory evaluation will be prepared before the final rule is issued. These interim procedures will assist the agency in its continuing effort to collect specific cost data on the program. The agency docketed an Addendum to its preliminary regulatory evaluation outlining the data available to date at the time it issued its initial interim final rule on August 23, 1989. The agency will issue a final regulatory analysis at the time the final rule is issued.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, UMTA believes that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Act, and accordingly has addressed this impact in its preliminary regulatory evaluation. The NPRM sought comment on the potential impact on this rule on small manufacturers of vans, paratransit vehicles and the like.

D. Paperwork Reduction Act

The collection of information requirements in this rule are subject to the Paperwork Reduction Act (44 U.S.C. chapter 35). Section 317 of STURAA specifically requires the establishment of the facility. The paperwork requirements contained in this rule have been submitted to the Office of Management and Budget and have received approval (OMB No. 2132–0550).

E. Federalism—Executive Order 12612

UMTA has reviewed this rule in light of the Federalism considerations set forth in Executive Order 12612. That Executive Order requires each Federal agency to address the impact of its regulations on State and local governments. Although this rule will have definite Federalism implications, because it will impose additional requirements on States, local governments, and public transit operators receiving Federal financial assistance from UMTA, this rulemaking is required by statute. UMTA considered the Federalism implications of this rulemaking during its

development, and has designed it to provide recipients with as much flexibility as possible under the law. UMTA does not expect that this rule will have a substantial direct effect on the relationship between the Federal Government and the States or the distribution of power and responsibilities among the various levels of government.

In addition, UMTA has considered the Federalism implications of this rulemaking on public transit operators which are quasi-governmental or instrumentalities of States and local government, and UMTA does not expect that this rule will have a substantial direct effect on the relationship between those public operators and the governmental entities with which they are associated. Accordingly, UMTA has determined that the preparation of a Federalism Assessment under Executive Order 12612 is not warranted.

Lists of Subjects in 49 CFR Part 665

Vehicle testing, Grant programs—transportation, Mass transportation.

Accordingly, for the reasons described in the Preamble, 49 CFR part 665 is amended, as set forth below:

PART 665—BUS TESTING

1. The authority citation for part 665 continues to read as follows:

Authority: Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*, 1608(h), section 317, Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR 1.51.

2. Section 665.3 is revised to read as follows:

§ 665.3 Scope.

This part applies to a recipient of Federal financial assistance under sections 3, 9, 16(b)(2), or 18 of the UMTA Act. These interim procedures shall be in effect from October 1, 1989, up to July 1, 1991, unless the agency, with appropriate notice, expands the scope of this rule to cover additional vehicles or makes the interim rule final at some earlier date.

3. Section 665.5 is amended by revising paragraph (2) in the definition of "new bus model", removing the definition of "major changes in configuration or components" and adding a definition of "major change in configuration" and "major change in components", as follows:

§ 665.5 Definitions.

* * * * *

Major change in components means a change in a vehicle's engine, axle, transmission, suspension or steering components.

Major change in configuration means a change which may have a significant impact on vehicle handling and stability, or structural integrity.

* * * * *

New Bus Model means a bus model which—

* * * * *

(2) Has been used in such service but which after September 30, 1988, is being produced with a major change in configuration or components.

* * * * *

4. Section 665.11 is amended by revising paragraph (b)(3), as follows:

§ 665.11 Testing requirements.

* * * * *

(b) * * *

(3) Medium-duty buses, approximately 25–35 foot with a minimum service life of seven years or 200,000 miles.

* * * * *

Issued on: October 2, 1990.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 90–23741 Filed 10–5–90; 8:45 am]

BILLING CODE 4910–57–M

Reader Aids

Federal Register

Vol. 55, No. 195

Tuesday, October 9, 1990

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H.R. 4952/Pub. L. 101-406

1992 Olympic Commemorative Coin Act. (Oct. 3, 1990; 104 Stat. 879; 3 pages) Price: $1.00

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1989. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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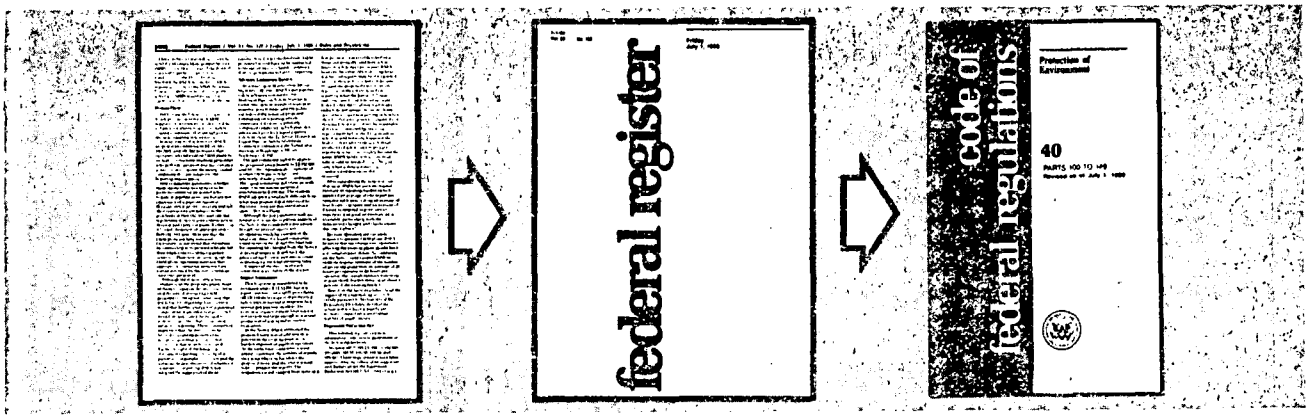

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